NFIDENTIAL.

DELHI RECORDS.

1

1919.

GOVERNMENT OF INDIA.

HOME DEPARTMENT.

POLITICAL—A. B.

Proceedings, June 1919, no. 82.

slative Department Proceedings regarding (i) the Anarchical and Revolutionary Crimes (IX of 1919), (Rowlatt Bill); (ii) a petition from the Hon'ble Mr. Patel asking that assent be no given to the measure.

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PREVIOUS REFERENCES.

1/513

LATER REFERENCES.

Legislative Deptt

NOTES.

A., APRIL 1919.

Nos. 58-77

THE ANARCHICAL AND REVOLUTIONARY CRIMES ACT, 1919 (XI OF 1919).

I place below the second and more important Bill in connection with the report of the Rowlatt Commission. It seeks to give effect to the recommendations of that Commission which are contained in paragraphs 178 to 197 of their report.

2. I think it may assist Hon'ble Member if I note very briefly my reasons for certain of the provisions in the Bill and also give him references to the relevant portions of the report on which each clause is based, for the report is unfortunately not numbered very carefully as regards its paragraphs and there is a certain amount of backward and forward reference.

3. *The preamble.*—The second recital in the preamble is made with reference to section 65 (3) of the Government of India Act, 1915. We are by this Bill setting up a new court and empowering it to pass any sentence authorised by law. Under the section referred to the previous approval of the Secretary of State in Council is necessaary to any law empowering any court other than a High Court within the meaning of that Statute to pass sentence of punishment of death on any of His Majesty's subjects born in Europe or on the children of such subjects. This point was raised by us when the Defence of India Act was passed, and it was decided that it was inexpedient to either exclude the class contemplated by the provision of the law to which I have referred or to delay proceedings in order to obtain the necessary sanction. I think it is clear that we cannot allow a defect of that kind to be continued in a permanent Act such as the present is intended to be. It will, therefore, be necessary to apply for the sanction required, and I think the fact that it has been obtained ought to be recited in the Bill.

4. Part I in the Bill deals with what the Commission call "Emergency measures (punitive)."

Clause 3 is based on the portion marked A on page 145 of the report.

Clause 4 is based on the portion of the same page marked B.

Clause 5 is based on paragraph 182 of the report.

Clause 6 is based on paragraph 183.

Clause 7 is based on the recommendation, marked C, on page 145. It will be seen, however, that I have inserted in the clause the words "which shall be deemed to be proceedings under Chapter XLI of that Code." I am not sure why it has been contended that section 512, Criminal Procedure Code, does not apply under the existing wording of section 7 of the Defence of India Act, but if it does not apply I think it must be because it is not stated that the proceedings are to be proceedings under the Code. I will endeavour, however, to ascertain from Mr. Stephenson when he returns to Simla what the actual grounds were for the doubt, and it may be that we shall have to alter the section to meet them.

Mr. Stephenson can throw no light on the matter.

A. P. MUDDIMAN,—30-10-1918.

Clauses 8 to 10 are based on the part marked D on page 145.

Clause 11 gives effect to the recommendation contained in the part of paragraph 186 of the report which I have marked A.

Clause 12 is based on the recommendation in paragraph 184, and follows closely the English law in 61 and 62, Vict. c. 36.

Clause 13 provides a rule to determine the right of reply, which is not provided for in the Code in the case of trials before magistrate.

Clauses 14, 15 and 16 are redrafts of the Defence of India Act provisions.

Clause 17 follows very closely the corresponding section of the Defence of India Act, and as regards the barring of interference of other courts, I have adopted the wording of that Act *verbatim*, as we have the judicial decisions of the Patna Court in our favour there.

Clause 18 gives effect to the recommendations in paragraph 185 of the report subject to the change referred to in the notes below.

Part II of the Bill seeks to give effect to the "minor state of siege" contemplated by that part of the report which is headed "Emergency measures (preventative)."

Clause 19 contains the condition of the application of the part.

2

I agree with the above note. Draft Bill approved as finally settled with Secretary.

G. R. L[OWNDES],—2-11-1918.

Get a fresh proof before the Bill goes over, and let me see, and take all the old proofs out of the file except the last, but keep them together.

A P. MUDDIMAN,—2-11-1918.

Old proofs removed. Fresh proof, in duplicate, submitted.

E. H. B.,—4-11-1918.

May now go to Home Department.

A. P. MUDDIMAN,—4-11-1918.

[HOME DEPARTMENT NOTES.]

The draft Bill gives effect to the recommendations of the conference held on October 2nd March 1918. I have discussed it with the Hon'ble Mr. Muddiman.

Page 2 *ante.*

Paragraph 3 of his note of 1st November, 1918.—We may agree to the clause as drafted.

Paragraph 4.—Part IV gives effect to the decision reached at the conference.

Paragraph 5.—We may agree in the proposals contained in this paragraph.

The only remarks I have to make on the Bill are as follows:—

Clause 10.—"Section 10" is clearly a mistake for "section 9."

Clause 24 (2).—Some such addition as is suggested in pencil on the margin seems desirable.

Clause 25 (3).—As the clause now stands, there seems to be no limitation of the period for which the new order will be valid.

Clause 33, 5th line. A small change in drafting would perhaps be an improvement.

Clause 35, empowers the infliction of a fine of any amount.

The Schedule.—Section 153-A, Indian Penal Code, should be included in (2).

[I submit to Hon'ble Member direct as Secretary is away and Mr. Muddiman, with whom Hon'ble Member may wish to discuss the Bill, is leaving Delhi on Saturday.]

S. R. HIGNELL,—21-11-1918.

His Excellency is very anxious that a copy of this Bill and of the other Bill relating to the recommendations of the Rowlatt Report should be forwarded to the Secretary of State with a Secretary's letter as soon as possible. Before this is done, I should like to discuss some points with the Legislative Department. I note below some points which appear to me to call for notice.

Clause 2.—By a printing or clerical error the Code of Criminal Procedure, 1898, is cited as the Criminal Procedure Code, 1896.

Clause 3.—The report speaks of "seditious offences," but the Bill refers to "scheduled offences." The schedule, however, makes it clear that when the offence is not directly an offence against the State it must be connected with a political movement endangering the safety of the State. It may be considered whether these words cannot be modified so as to make the Bill apply to the particular offences mentioned in the schedule only when they are connected with any movement to promote sedition or disaffection. I think that the words "political movement" may be criticised. Incidentally it may be considered whether the application of the Act to offences under the Explosive Substances Act and the Arms Act should not also be confined to cases when such offences are committed in connection with seditious movements. Finally, I should like to add section 153-A, to the sections of the Penal Code now included in the schedule.

2. It will be seen that the provisions of the Bill will limit the application of the Act very much more strictly than is the case under the Defence of India Act. It is doubtful, for instance, whether the new law should be used in cases such as the recent Hardwar case or other cases, which have been dealt with under the Defence of India Act in Bombay and the Punjab, or whether the preamble would justify the application of the Act to the trial of cases arising out of disturbances like the Arrah riots of last year.

"prevalent".....," and that it is expedient." Possibly the following words might be substituted: "so prevalent".....," that it is necessary."

3. As a matter of drafting, I am not very clear as to the propriety of the words "trial of an offence." Ordinarily we speak of the trial of a person or of a case. The Defence of India Act refers to the trial of persons accused of offences. In the Criminal Procedure Code trials are held of persons accused of offences and also of cases, but in some sections, *e.g.*, section 260,

the expression "trial of offences" is used. For practical purposes I think it will be convenient to use the term "trial of persons."

Clause 4 (3).—In this clause I suggest that the words "meet the complaint" are not very suitable, though I have no doubt they are based on some precedent.

Clause 4 (4).—I should like to be quite clear as to the intention in this clause. Is the complaint, that is the written complaint, to be verified and accepted without examination of the complainant, or is the complainant to be examined on oath as in an ordinary case? I suggest the former. I notice also that the clause here speaks of the Chief Justice, but in the earlier part of the clause the complaint is to be made to the High Court, that is I suppose to any Judge sitting on the Original Side.

Clause 12.—In practice this provision may give rise to difficulty. Section 342 of the Criminal Procedure Code authorises the Court to question the accused at any stage. I do not see also why if an accused refuses to give evidence it should be necessary to defer his examination until after the defence witnesses have been examined. In many cases it might be advantageous to examine him before the defence witnesses in accordance with the present practice.

Clause 12 (3) (b).—"A bad character" is a slip for "of bad character."

Clause 12 (3) (b) (i).—This clause seems a little difficult to follow, and I suggest that after the word "admissible" the words "under any law for the time being in force" might be added.

Clause 15.—I should rather like to see this clause modified. I presume that the conviction is subject to a charge being framed, and I think it might be well to insert a provision making it clear that although the prosecution was launched with one accusation, the Court might frame a charge of an offence not included in the schedule, and then proceed either to acquit or to convict of that charge.

Clause 18.—The word "Statement" seems very general. Statements of facts relevant to the issues in question are, I take it, the only statements that would be admitted under this clause.

Clause 20.—I incline to the view that the words "public safety" go too far in the first part of this clause. I understand that this legislation is to be restricted to what may be really called seditious movements and that we are not re-enacting the provisions of the Defence of India Act, though we retain some of the powers conferred by the rules under that Act for use in certain circumstances. I should prefer to substitute something on the following lines—"Likely to excite disaffection towards His Majesty or the Government established by law in British India," or as an alternative—"Likely to promote the commission of offences against the State" in the first part of the clause.

I do not object to the use of the words in sub-clause (*d*).

Clause 21.—Before this clause is finally accepted, I think the old papers about the difficulty of serving these notices should be looked up when we can ascertain if the clause as drafted meets all reasonable requirements.

Clause 24.—It is for consideration whether we should not make it clear that pleaders are not to be allowed to appear in these investigations.

Clause 25.—"any order." The period for which the second order is to be made should be defined. Possibly also provision is necessary for further orders on the expiry of the second year.

Clauses 26 and 35.—What is the penalty for failure to give security? Is it necessary to provide that the local Government may from time to time modify any order made under clause 20?

Clause 27.—The application for the enforcement of bonds will probably be made to the District Magistrate or some subordinate of his. It might therefore be more convenient if the applications were made by the Public Prosecutor or some other authority acting on behalf of local Government.

Clause 28.—This clause will need modification in view of the recent order in Council that investigating authorities are to be appointed not for any particular case but for particular areas and periods.

Clause 29.—I should like if possible to give some general ideas as to the functions of the visiting Committees.

Clause 30.—"to endanger"? "seriously to endanger."

Clause 31.—The same remarks apply as in clause 21. Further the report lays stress on the fact that the custody is to be non-penal, and I think that this fact should be brought out in the Bill.

Clause 33.—After the word "place" the modification suggested by the Deputy Secretary might be inserted.

Clause 36 (b).—I think that the power of the Government should be restricted to the case of persons in respect of whom orders had been made by reason of their seditious conduct, or participation in revolutionary movements, making it clear that the Goverment's decision on this point is to be final.

W. H. V[INCENT],—4-12-1918.

5

This note and the draft Bill were to be discussed at a Conference between the Hon'ble Law Member, myself, Sir James DuBoulay and Mr. Monerieff Smith at the conclusion of which the Hon'ble Law Member kindly said he would prepare a revised draft based on the decisions reached.

W. H. V[INCENT],—4-12-1918.

[LEGISLATIVE DEPARTMENT NOTES.]

I place below the latest proof of the Rowlatt Bill and also, for purposes of comparison, a proof obtained on Saturday in which were embodied certain amendments decided on at the last discussion with the Home Department. Both proofs are uncorrected as to press errors. I see that the next mail leaves on Friday morning, and the Hon'ble the Law Member, in discussion with whom the latest draft has been settled, desires me to state that this Department will be ready to discuss the Bill at any time so as to permit of its despatch by this mail, if after examination the Home Department desires further discussion. At the last discussion an amendment was made in clause 31 to enable an arrest to be made anywhere in British India, and I may point out that an order of confinement under 31 (*1*) (*b*) can, as the draft stands, be given effect to only in an area notified under section 30 It is for the Home Department to say whether they desire powers to confine anywhere in British India.

H. M. SMITH,—9-12-1918.

[HOME DEPARTMENT NOTES.]

Submitted for orders.

A. L.,—9-12-1918.

It seems to me that section 31 as now drafted is adequate.

I am unhappy about section 36 for two reasons :—

(1) The whole object of section 36 (*a*) is to bring within the scope of the law dangerous absconders. Its actual effect is only to bring them within the scope of the first Part. It will not be possible to bring into effect against them the preventive measures : and yet we know that it will not be feasible to bring most of them to trial.

The difficulty is met to a very large extent if it is recognised that Parts II and III will have to be applied to Bengal at once.

(2) Most of the men who are held in the Punjab are held not under the Defence of India Act, but under the Ingress into India Ordinance. The Punjab have steadily pursued a policy of gradually releasing all but the most desperate and recalcitrant. Apparently they will, unless some provision is made for them in the same way as for persons held under Defence of India Rule 3, all have to be summarily released six months after the declaration of peace.

Hon'ble Member will doubtless note the urgency of this reference.

The file is, I believe, with him.

J. H. DUBOULAY,—9-12-1918.

These notes should be added to the main file. There are minor points in the revised draft which may require re-examination, but I do not think that we should delay the despatch of the Bill to the Secretary of State on this account. I have marked in pencil some points on a copy of the draft (sent to me direct by the courtesy of the Legislative Department), and I should like to have that draft with the pencil notes kept for future reference in the file.

2. The two points raised by the Secretary are, however, of great importance, and I think that if possible modifications to cover the points raised by him should be made in the Bill.

3. I should like to send a copy of the draft to Sir Michael O'Dwyer and Sir Henry Wheeler with a demi-official, if the Legislative Department agree. These officers have detailed knowledge of the working of the present Act, which we lack, and their advice before publication in the Gazette would be very useful.

Legislative Department agree if it is made clear we are not going back on or outside the report.

W. H. V[INCENT],—10-12-1918.

4. With reference to the note of the Secretary in the Legislative Department, the decision, as far as I remember, was that provision was to be made for the detention of a prisoner when arrested outside the province and for his removal in custody to the province from which the original order was issued ; otherwise, indeed, the arrest might be infructuous if effected outside the province.

W. H. V[INCENT],—10-12-1918.

I submit for consideration a draft to Sir Michael O'Dwyer which would, I think, with some slight modification, be also suitable for issue by Hon'ble Member to Sir Henry Wheeler. I understand that Hon'ble Member proposes to discuss the Bills further with the Legislative Department in the light of the pencil notes which he has made upon the draft, but that he proposes to defer that until he has received replies from Sir Michael O'Dwyer and Sir Henry Wheeler.

Hon'ble Member has approved the draft as modified to Sir Michael O'Dwyer. In addressing Sir H. Wheeler a few slight modifications as indicated. Please put up fair copies quickly for Hon'ble Member's signature.

J. H. DuBoulay,—13-12-1918.

Demi-official from the Hon'ble Sir W. H. Vincent, Kt., to (1) the Hon'ble Sir Michael Francis O'Dwyer, G.C.I.E., K.C.S.I., Lieutenant-Governor of the Punjab, (2) Sir H. Wheeler, Council Member, Bengal, No. 2039, dated Delhi, the 14th December, 1918.

I send herewith a copy of the two Bills that have been drafted in order to give effect to the recommendations of the Rowlatt Committee, and I should be grateful if you would look through them and let me know if you have any suggestions to make for their alteration before publication. They have had to be dealt with very urgently and there has been no time to consult you before. We have asked the Secretary of State by telegram to sanction their publication and have sent him Home copies of the Bills by this mail. We do not know what attitude he will adopt in the matter and are rather afraid that he may take exception to some of the more important provisions. We recognised from the first that it would be quite impossible to put through our Council drastic measures of this nature, unless we were in a position to say that they had the unanimous support of the Rowlatt Committee, and bearing that in mind our main object has been so to construct the Bills that they shall in all respects fall within the four corners of the recommendations of the Committee. Not a few points have occurred to us in which the Bills, to be effective, seem to require an amplification of their scope, but we have resisted the temptation so to amplify them in any way which would not be supported by the authority of the Rowlatt Committee's report and we are not prepared to go beyond that recommendation. The Bills, however, if they are passed into law, will have to be worked by the Local Governments, and it is possible that in preparing them we have overlooked points of practice and procedure and have left *lacunæ* which your local knowledge and experience may enable us to fill before the publication of the Bills. As an example of the sort of thing I have in mind I may refer to section 31 of the main Bill, which provides (*a*) for that arrest and (*b*) for the confinement of certain persons. As the Bill first came to me it contained no provision for the arrest of a man outside the province to which Part III had been extended. The necessary modification has now been made, but I am still in some doubt whether, assuming that an order of arrest was passed in the $\frac{\text{Punjab}}{\text{Bengal}}$ and the man was actually arrested in Bombay, it is necessary to make any provision for his conveyance to the place of confinement in the $\frac{\text{Punjab}}{\text{Bengal}}$. This is a matter on which we should be grateful for your views. A more important point is involved under section 36, clause (*b*). *(I believe you still have a certain number of persons) under restraint under the authority of the Ingress into India Ordinance. When the Bill first came to me no provision was included for applying Part IV to such people but, as you will see, that has now been inserted. I have no information as to the actual procedure of your Government in dealing with this Ordinance, and I should like you to give your special attention to the drafting of clause (*b*) of section 36 in so far as this matter is concerned; (I imagine that though the number still held under it in the Punjab is comparatively small it consists of desperate characters for whom it is necessary to make adequate provision and) you will recognise that when once the Bill has been published it will be extremely difficult if not impossible to make any alterations in the direction of tightening it up.

*To Sir H. Wheeler: I am not sure whether you have any persons.

) Omit in letter to Sir H. Wheeler.

As regards the minor Bill, there are several points about which I am not very happy. Thus clauses 5 and 6 are limited to offences under Chapter VI of the Indian Penal Code, and inasmuch as we know that members of the revolutionary party are frequently found guilty of such offences as extortion, criminal intimidation, and dacoity in furtherance of the seditious objects of their conspiracies, although they are not convicted of offences under Chapter VI, the proposed amendment of the law does not seem likely to help us much. But we have discussed the question here at great length and are convinced that it would be undesirable to amplify these clauses for the reason suggested in the earlier part of this letter, namely, that we cannot go beyond the recommendations of the report.

We are anxious to publish as soon as we can get authority from the Secretary of State, and in order that there may be no delay I should be much obliged if you would let me have a reply to this as soon as you can.

7

Hon'ble Member wants the file with the draft rules proposed as a result of the Rowlatt Committee report to take with him to Calcutta.

Please put up at once.

J. H. DuBoulay,—21-12-1918.

The files are put up below.

E. H. P.,—21-12-1918.

J. H. DuBoulay,—21-12-1918.

Please give file* to Mr. Smith to pack with other files to Calcutta, but first wire† to Sir Michael O'Dwyer asking him if his reply is not sent to send it to me to 12, Russell Street, Calcutta, very urgently.

W. H. V[incent],—21-12-1918.

*Given to Mr. Smith.

†Action taken separately.

A. L.,—21-12-1918.

I send papers on Rowlatt Bill in case you would like to read this again. Also last revise of Bill as received from Legislative Department. Sir G. Lowndes has agreed to attend a meeting here to discuss Bill at 6 P.M. to-day if this hour is convenient to others. I suggest the hour fixed is convenient to me, and Sir H. Wheeler has kindly agreed to be present. Will you also attend, or let me know if some other hour would be more convenient.

W. H. V[incent],—2-1-1919.

I will attend the meeting as requested. I am much obliged for the opportunity of perusing the revised draft, which has been considerably altered since the draft of 8th November, which originally went to the Home Department.

2. In the short time available before the meeting I am unable to follow all the changes that have been made. As no reasons have been recorded, I think the Bill will need careful re-examination.

A. P. Muddiman,—2-1-1919.

I place below a copy of the Bill marked "Working copy" which has been corrected in red ink, with type-written additions after discussion with Hon'ble Member as the result of the discussions at Calcutta and my talk with Hon'ble Member to-day. I think he will find the changes made not very numerous, and I have already verbally discussed with him my reasons for making them.

2. I venture to submit the Bill in this form, as I think it will give Hon'ble Member less trouble than if I had called for a fresh proof of the Bill. There is a spare copy of the last proof of the Bill in the file should Hon'ble Member desire to work on that.

A. P. Muddiman,—6-1-1919.

Discussed and finally settled as regards this Department with Hon'ble Member. Get fresh proof, with 10 spare copies.

A. P. Muddiman,—7-1-1919.

Put up.

C. H. Perreira,—8-1-1919.

The draft Bill now placed in the file as finally revised has been accepted by the Hon'ble Sir William Vincent and the Law Member. Please get a fresh proof *immediately* and when received send the file to the Home Secretary (by name), with the request that it may be returned with a statement of objects and reasons signed by the Hon'ble the Home Member, in order that His Excellency's orders may be taken with a view to publication.

A. P. Muddiman,—9-1-1919.

[Home Department Notes.]

I submit a draft statement of objects and reasons.

J. H. DuBoulay,—9-1-1919.

I think some words must have slipped out in printing the last line of the first proviso to section 25.

J. H. DuBoulay,—9-1-1919.

There is a printing error in clause 25, 1st proviso (*vide* the proof below). The statement of objects and reasons seems to be all that is required. It was prepared after consultation with me.

This has now been put right.

E. H. B.

W. H. V[INCENT],—10-1-1919.

A { As soon as the Bill is published the special attention of Local Governments should be drawn to the provisions of clause 38 and the necessity for issuing such orders on individuals as are necessary.

W. H. VINCENT,—10-1-1919.

The statement has now been typed out in full and is submitted for Hon'ble Member's signature.

J. H. DUBOULAY,—11-1-1919.

W. H. V[INCENT],—11-1-1919.

This may now go to Legislative Department.

J. H. DUBOULAY,—11-1-1919.

[LEGISLATIVE DEPARTMENT NOTES.]

Note for His Excellency submitting the Bill (together with the other Bill) for His Excellency's sanction to publish, is being separately submitted. Meanwhile Secretary wishes Legal Assistant to read this Bill.

2. Attention is invited to A above. This can be done next week.

E. H. B.,—13-1-1919.

I have read the Bill and under Secretary's directions made a few alterations.

B { The Hon'ble the Home Member's note dated the 10th January, 1919, *re* clause 38 of the Bill refers to action which is to be taken by the Home Department. I do not think we are concerned.

S. C. GUPTA,—13-1-1919.

A and B: extract sent to Home Department for necessary action.

E. H. B.,—16-1-1919.

Note for His Excellency.

The Secretary of State has sanctioned the publication of the following Bills, which give effect to the recommendations of the Rowlatt Commission :—

(1) Indian Criminal Law (Amendment) Bill.

(2) Criminal Law (Emergency Powers) Bill.

His Excellency's formal orders are now solicited to their publication, together with the Statements of Objects and Reasons in the Gazette of India of the 18th instant, under Rule 23 of the Rules for the Conduct of the Legislative Business of the Council of the Governor General. The Home Department concurs in this proposal.

H. M. SMITH,—13-1-1919.

C[HELMSFORD],—13-1-1919.

Both Bills have been read by Legal Assistant and proofs in Gazette form have been called for. The Bills with their Statement of Objects and Reasons will be published on Saturday. Home Department may see.

E. H. B.,—14-1-1919.

H. M. SMITH,—14-1-1919.

[HOME DEPARTMENT NOTES.]

Seen in the Home Department and returned with thanks.

A. L.,—14-1-1919.

S. R. HIGNELL,—15-1-1919.

J. H. DUBOULAY,—15-1-1919.

These have been sent by to-day's mail.
A. L.,—16-1-1919.

Copies of revised Bill should also go to Secretary of State this mail.

W. H. V[INCENT],—16-1-1919.

[LEGISLATIVE DEPARTMENT NOTES.]

Secretary (Mr. Muddiman) obtained the permission of His Excellency through Private Secretary to the Viceroy to the publication of the two Rowlatt Bills in the Gazette of India and in the local official Gazettes in English. Usual draft to Local Governments submitted. Paragraph 2 is for approval as the case is special and early publication is essential. Otherwise Local Governments are extremely dilatory, and they will be publishing after the measure has been introduced.

E. H. B.,—16-1-1919.

C. H. PERREIRA,—16-1-1919.

H. M. SMITH,—16-1-1919.

NOTIFICATION No. 14, DATED THE 16TH JANUARY, 1919. — Pro. No. 58

BILL AS PUBLISHED, WITH STATEMENT OF OBJECTS AND REASONS. — Pro. No. 59

CIRCULAR TO LOCAL GOVERNMENTS, No. 165, DATED THE 16TH JANUARY, 1919. — Pro. No. 60

OFFICE MEMORANDUM TO HOME DEPARTMENT, No. 225, DATED THE 20TH JANUARY, 1919. — Pro. No. 61

TO THE INDIA OFFICE, No. 18, DATED THE 22ND JANUARY, 1919. — Pro. No. 62

EXTRACT FROM COUNCIL PROCEEDINGS, DATED THE 6TH FEBRUARY, 1919. — Pro. No. 63

EXTRACT FROM COUNCIL PROCEEDINGS, DATED THE 7TH FEBRUARY, 1919. — Pro. No. 64

Drafts to India Office and Home Department put up.

E. H. B.,—8-2-1919.

C. H. PERREIRA,—8-2-19.9.

TO THE INDIA OFFICE, No. 25, DATED THE 12TH FEBRUARY, 1919. — Pro. No. 65

OFFICE MEMORANDUM TO THE HOME DEPARTMENT, No. 430, DATED THE 10TH FEBRUARY, 1919. — Pro No. 66

REPORT OF THE SELECT COMMITTEE WITH AMENDED BILL. — Pro. No. 67

EXTRACT FROM COUNCIL PROCEEDINGS, DATED THE 1ST MARCH, 1919. — Pro. No. 68

Report of the Select Committee presented on 1st March, 1919.

Draft to India Office and Home Department put up.

E. H. B.,—1-3-1919.

C. H. PERREIRA,—3-3-1919.

TO THE HOME DEPARTMENT, No. 614, DATED THE 3RD MARCH, 1919. — Pro. No. 69

TO THE INDIA OFFICE, No. 56, DATED THE 5TH MARCH, 1919. — Pro. No. 70

ACT XI OF 1919.

EXTRACT FROM COUNCIL PROCEEDINGS, DATED THE 12TH MARCH, 1919. — Pro. No. 71

Pro. No. 72 — Extract from Council Proceedings, dated the 13th March, 1919.

Pro. No. 73 — Extract from Council Proceedings, dated the 14th March, 1919.

Pro. No. 74 — Extract from Council Proceedings, dated the 18th March, 1919.

Pro. No. 75 — Letter from the Hon'ble Mr. V. J. Patel, dated the 19th March, 1919.

Prays that His Excellency may be pleased to withhold his assent to the Rowlatt Bill which has been passed into law or to reserve it for the signification of His Majesty's pleasure thereon.

The letter of the Hon'ble Mr. Patel may be submitted to His Excellency along with the Law for His Excellency's assent with the note ~~on the next page~~ below. Home Department may perhaps see in the first instance.

Hon'ble Member may also see.

E. H. B.,—20-3-1919.

Mr. Patel bases his petition on section 68 (1) of the Government of India Act, 1915. He makes an alternative request :—

(*a*) that assent be withheld, in which case the law dies ;

(*b*) that the law be reserved for the signification of His Majesty's pleasure thereon.

There is apparently no precedent for the latter course. His Excellency may desire to consult his Council on the proposal ; but it is to be remembered that the powers conferred by section 68 are vested in the Governor General personally, and though we are in a way the department concerned, yet we are in this case the mouthpiece not of the Government of India but of His Excellency. I think therefore that the Rules of Business (Part V) do not apply to this case ; and however great the importance of the case may be it is not one which we can suggest should be taken in Council.

There is of course no question of withholding assent. As to whether the law should be reserved I do not venture to express an opinion, as I am aware that Hon'ble Member has already considered the point. (I have for the present placed in a cover below the assent copy of the Law, in order to avoid possible damage.)

H. M. Smith,—20-3-1919.

The matter is, of course, one entirely for His Excellency and not for the executive council; I mentioned the question of reserving the Act for the signification of His Majesty's pleasure as a possible course open to His Excellency but I am not prepared to advise that it should be adopted, as I believe that His Excellency has throughout accepted the necessity of this Act being placed upon the Statute Book, and it has from the first been recognised that we could only pass it in the teeth of the Indian Members.

G. R. L[owndes],—20-3-1919.

Note for His Excellency.

The Anarchical and Revolutionary Crimes Law which was passed by the Imperial Legislative Council on the 18th instant is submitted for His Excellency's assent under section 68 (1) of the Government of India Act, 1915.

2. A letter has been received from the Hon'ble Mr. V. J. Patel praying that His Excellency may be pleased to withhold his assent to the measure, or to reserve the Act for the signification of His Majesty's pleasure thereon, in accordance with the provisions of section 68 of the Government of India Act, 1915, on the grounds "that the measure is extremely unpopular and has been passed into law in spite of the unanimous Indian opinion both in and outside the Council to the contrary."

3. If His Excellency approves it is proposed to reply to the Hon'ble Mr. Patel that his letter was laid before the Governor General who regrets that he is unable to accede to his prayers.

4. It is submitted that there is no question of withholding assent. The Hon'ble the Law Member is not prepared to advise that the law should be reserved for the signification of His Majesty's pleasure thereon. There appears therefore to be no reason why His Excellency should not declare his assent to the law.

H. M. Smith,—21-3-1919.

C[helmsford],—21-3-1919.

Draft for approval. (The Law will be published in tomorrow's Gazette.)

E. H. B.,—21-3-1919.

H. M. SMITH,—21-3-1919.

LETTER TO THE HON'BLE MR. PATEL, No. 880, DATED THE 21ST MARCH, 1919. Pro. No. 76

ENDORSEMENT TO THE HOME DEPARTMENT, No. 881, DATED THE 21ST MARCH, 1919.

Draft to Secretary of State put up.

E. H. B.,—21-3-1919.

C. H. PEREIRA,—21-3-1919.

GOVERNOR GENERAL'S LETTER TO HIS MAJESTY'S SECRETARY OF STATE FOR INDIA, No. 26, DATED THE 26TH MARCH, 1919. Pro. No. 77

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Appendix to Notes.

FINAL. No 13

BILL TO COPE WITH ANARCHICAL AND REVOLUTIONARY CRIME.

LIST OF AMENDMENTS ARRANGED IN ORDER.

To be moved at the meeting of the Indian Legislative Council to be held on 12th March, 1919.

1. Mr. Patel :—

That the so-called Report of the Select Committee is both an incomplete and invalid document and it be, therefore, cancelled.

2. Mr. Khaparde :—

That the Report of the Select Committee be not taken into consideration as it is incomplete.

3. Mr. Shukul :—

That the Bill be recommitted to the Select Committee to complete its report.

4. Mr. Banerjea :—

That the Select Committee's Report, together with the Bill and connected papers, be referred to Local Governments, High Courts and public bodies for criticisms.

5. Mr. Chanda :—

That the Bill, as amended by the Select Committee, be republished and circulated for the opinion of, among others, the High Courts and Chief Courts.

6. Mr. Khaparde :—

That the Bill be republished in the Gazette of India in English and in all the Provincial Gazettes in English and in the principal vernaculars of each province.

7. Mr. Ayyangar :—

That the Bill as amended by the Select Committee including the minutes of the Hon'ble Messrs. Patel, Khaparde and Malaviya be referred to Local Governments, High Courts, and public bodies such as Municipalities and District Boards and such Political Bodies as the Government deems fit to consult for criticisms.

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8. Mr. Chanda :—

* That the revised Bill be recommitted to the Select Committee with instructions to report to the Council during the next Simla Session.

* To be moved if No. 5 is not accepted.

9. Mr. Chanda :—

† That the following members be added to the Select Committee :—

† To be moved if No. 8 is accepted.

(1) The Hon'ble Sir Claude Hill.
(2) The Hon'ble Sir C. Sankaran Nair.
(3) The Hon'ble Mr. Jinnah.
(4) The Hon'ble Mr. Sarma.
(5) The Hon'ble Mr. Mazharul Haque.

10. Mr. Patel :—

That to the motion for taking the Report of the Select Committee into consideration the following words be added :—

"This day 1921."

11. Mr. Khaparde :—

That the Bill be not taken into consideration until the Governor General in Council receives from Parliament an express authority by an Act of Parliament to pass it.

12. Mr. Patel :—

That for the words "taken into consideration" at the end of the motion for taking the Report of the Select Committee into consideration, the following be substituted :—

"deferred till the question regarding the competence of this Council is authoritatively settled by His Majesty's Government, to whom necessary reference should be made in that behalf".

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13. Mr. Chanda :—

That after sub-clause (2) of clause 1 the following sub-clause be inserted :—

"(2*a*) This Act shall not come into force till six months will have elapsed after the formation of new Legislative Councils in accordance with the Reform Scheme. Provided, however, that if anarchical and revolutionary crimes become prevalent in any part of British India before that the Governor General may with the consent of the Legislative Council make a declaration to that

effect in the Gazette of India and introduce any provisions of this Act or if necessary the whole Act in such part."

(*If the above is accepted there will be consequential amendments in clauses 3, 20 and 32.*)

14. Mr. Chanda :—

That in clause 1 (3) for the words "three years" the words "one year" and for the words "of the termination of the present war" the words "this Act comes into force" be substituted.

15. Mr. Patel :—

That in clause 1 (3) for the words "three years" the words "one year" and for the words "termination of the present war" the words "passing of the Reform Bill in Parliament" be substituted.

16. Mr. Shukul :—

That in clause 1 (3) for the words "three years" the words "one year" be substituted.

17. Mr. Sarma :— **Clause 2.**

That in clause 2(1) the following definition be inserted :—

"Revolutionary movement" means a movement directed to the overthrow by force of His Majesty's established government in India".

18. Mr. Patel :— **Part I.**

That Part I be deleted

19. Mr. Khaparde :— **Clause 3.**

That in clause 3 for the words "in Council" the words "in Legislative Council" be substituted.

20. Mr. Patel :—

That in clause 3 after the words "he may" the words "with the previous approval of the Indian Legislative Council" be inserted.

21. Mr. Sarma :—

That to clause 3 the following provisos be added :—

"Provided that no action shall be taken by the Governor General in Council, without giving the Indian Legislative Council or the Legislative Council of the province in respect of which such a notification is proposed to be made, an opportunity of expressing its opinion by a resolution passed on the subject :

"Provided further that such notification shall at any time after the expiry of one year from the

date thereof be withdrawn on the recommendation of the Indian Legislative Council or the Legislative Council of the province in respect of which it may have been made by a resolution passed by three-fifths of the members of either of the said Councils".

Clause 4. **22. Mr. Patel :—**

That in clause 4 (1) after the words "it may" the words "after hearing the person concerned" be inserted.

23. Mr. Patel :—

That in clause 4 (2) after the words "any person" the words "whose case is under enquiry before a Magistrate or" be inserted.

24. Mr. Khaparde :—

That in clause 4 (2) after the words "Court of Session" the words "or has been placed before a Magistrate" be inserted.

25. Mr. Sarma :—

That in clause 4 (2) after the words "Court of Session" the following words be inserted :—

"or is undergoing a trial in respect thereof before a Magistrate".

26. Mr. Patel :—

That in clause 4 (2), for the words "whether such offence was committed before or after," the words "if such offence was committed more than three months before" be substituted.

27. Mr. Chanda :—

That to sub-clause (4) of clause 4 the following be added :

"calling upon him to show cause within such time as may be fixed by the Chief Justice why the trial should not be held in accordance with this Part. The Chief Justice may, if he thinks proper, extend such time on the application of the accused".

28. Mr. Chanda :—

That the following sub-clause be added to clause 4 :—

"(5) The Chief Justice may direct that the accused, if in custody or under arrest, be produced before him and when he is produced before him, or without directing that he be produced, order hat he be admitted to bail".

Clause 5. **29. Mr. Chanda :—**

That in clause 5 after the words "to him" the following words be inserted :—

"and after considering any cause shown by the accused and further inquiry if any which he considers necessary".

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30. Mr. Patel :—

That in clause 5, for the words "the Chief Justice shall" the words "the Chief Justice may after hearing the accused" be substituted.

31. Mr. Sarma :—

That in clause 5 after the words "three of the" the word "permanent" be inserted.

32. Mr. Patel :—

That in clause 5 before the words "High Court Judges" the word "permanent" be inserted ; and that in clause (*b*) of the proviso to clause 5, before the words "Judges of that High Court" the word "permanent" be inserted.

33. Mr. Sarma :—

That in the proviso to clause 5 after the words "two such" and after the words "who are" the word "permanent" be inserted.

34. Mr. Khaparde :—

That after clause 5 the following clause be inserted :—

"5-A(*1*) The Court of criminal appeal under this Act shall consist of the Judges of the High Court within the jurisdiction of which the Special Tribunal held its sittings and not less than five of any of those Judges may sit and exercise the powers of the Court :

Provided that when the number of the Judges of the High Court does not exceed four, the Chief Justice may nominate not more than one Judge and shall complete the Court by the nomination of the rest from either of the following classes :—

(*a*) persons who have served as permanent Judges of the High Court or

(*b*) with the consent of the Chief Justice of another High Court, persons who are Judges of that High Court :

Provided further that a Judge who sat in the Special Tribunal shall not sit in the Court of criminal appeal on any appeal against a conviction by that special tribunal to which he was a party.

(*2*) The determination of any appeal shall be according to the determination of a majority of the Judges who heard the appeal".

35. Mr. Patel :—

That in the proviso to clause 6, for the words "the Court shall" the words "the Court may" be substituted and the words "for reasons to be recorded in writing" be deleted.

Clause 6.

36. Mr. Khaparde:—

That in the proviso to clause 6 for the words from the word "make" to the words "any other order" the following words be substituted :—

"make such order as it deems fit and shall order the expenses of the person charged, his witnesses and counsel to be paid by Government."

37. Mr. Shukul:—

That in the proviso to clause 6 the words from "nor shall" to the end of the proviso be deleted.

38. Mr. Khaparde:—

That in the proviso to clause 6 the words from "nor" to the end of the proviso be deleted.

39. Mr. Sarma:—

That in the proviso to clause 6 the words from "nor shall" to the end of the proviso be deleted.

40. Mr. Chanda:—

That the following be added to the proviso to clause 6:—

"Where there is no Advocate General, the Court may of its own motion or on being moved by either party and after hearing the accused when it acts of its own motion or on the application of the prosecution direct that the whole or any part of the trial shall be held at any place other than the usual place of sitting of the High Court".

41. Mr. Chanda:—

That the following further proviso be inserted after the proviso to clause 6:—

"Provided further that—

(*a*) if the trial or any part of it be transferred by the Court as aforesaid on the application of the prosecution or on a certificate by the Advocate General or on its own motion, the accused if on bail shall be entitled to his reasonable travelling or other expenses necessitated by such transfer. The Court shall have power in all cases to impose such terms as to cost and other matters as appears proper to the Court, when ordering such transfer; and

(*b*) the accused shall have the right of moving the Court to direct that the trial or any part of it be transferred in the same manner and the Court after hearing the prosecution may then pass such order as appears proper to it".

42. Mr. Chanda:—

That the following proviso be added to clause 8:—

"Provided that the accused shall have the right of cross-examining any prosecution witness

if he so wishes before the framing of any charge without prejudice to his right of cross-examination after the framing of the charge ".

43. Mr. Khaparde:— Clause 9.

That in clause 9 after the word "necessary" the words "for the attendance of defence witnesses or" be inserted.

44. Mr. Chanda:—

That to clause 9, the following be added:—

"The accused shall be entitled to get copies of the depositions and exhibits free of cost to prepare his line of defence ".

45. Mr. Patel:—

That to clause 9, the following words be added:—

" or to enable the accused to secure the attendance of his witnesses ".

46. Mr. Chanda:—

That after clause 9 the following clause be inserted:—

" 9 A. If there is any record of any previous statement or evidence or of substance thereof, of any prosecution witness made to any authority including the police the accused shall be entitled to have copies of such evidence, statement or substance on applying for the same ".

47. Mr. Chanda:— Clause 11.

That in clause 11 the words " its proceedings or " be omitted; and the following proviso be added to the same clause:—

" Provided that the Court is unanimous on the point ".

48. Mr. Banerjea:— Clause 12.

That clause 12 be deleted.

49. Mr. Patel:—

That clause 12 be deleted.

50. Mr. Khaparde:—

That clause 12 be deleted.

51. Mr. Chanda:—

That for sub-clause (3) of clause 12 the following sub-clause be substituted:—

" (3) No inference adverse to the accused shall be drawn from his failure to give evidence on oath ".

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52. Mr. Patel:—

That to sub-clause (3) of clause 12, the words " or of any inference by the Court " be added.

53. Mr. Shafi :--

That to sub-clause (3) of clause 12 the following be added :—

"nor shall the Court draw any inference adverse to the accused from such failure.

54. Mr. Shukul :—

That to clause 12 (3) the following be added :—

"nor shall the Court draw any inference adverse to the person charged from such failure".

55. Mr. Sarma :—

That in sub-clause (*b*) (*ii*) of clause 12 (4) the words from "or the nature or the conduct of" to the words "the prosecution or" be deleted.

Clause 14. **56. Mr. Shukul :—**

That for clause 14 the following clause be substituted :—

"14. The accused shall be acquitted unless all the Judges constituting the Court concur in convicting him".

57. Mr. Chanda :—

That for clause 14 the following be substituted :—

"14. The accused shall be acquitted if the Court is not unanimous in finding him guilty".

58. Mr. Banerjea :—

That for clause 14 the following clause be substituted :—

"14. The accused shall not be convicted except on the unanimous opinion of the Judges constituting the Court".

59. Mr. Patel :—

That in clause 14 for the words "the opinion of the majority shall prevail" the words "the accused shall be acquitted" be substituted.

60. Mr. Patel :—

That to clause 14 the following words be added :—

"but in no case of difference of opinion shall a sentence of death be passed".

Clause 15. **61. Mr. Sarma :—** 20

That in clause 15 after the word "Schedule" the words "in connection with an anarchical or revolutionary movement" be inserted.

62. Mr. Sastri :—

That to clause 15 the following be added :—

"Provided that the offence of which he is so convicted is connected with an anarchical or revolutionary movement."

63. Mr. Patel :—

That to clause 15 the following proviso be added :—

"Provided that the Court shall not convict the accused of any offence referred to in clause (2) of the schedule or of any attempt or conspiracy to commit any such offence or of any abetment of any such offence unless it is proved to its satisfaction that such offence, attempt, conspiracy or abetment is connected with a particular movement endangering the safety of the State."

64. Mr. Chanda :—

That the following provisos be added to clause 15 :—

"Provided that before convicting the accused of such other offence the Court shall give him an opportunity of showing that he is not guilty of it by re-calling and cross-examining or further cross-examining any prosecution witness, as the case may be, or examining any defence witness whether such witness has been previously examined or not.

"Provided further that the Court shall, when so convicting the accused, record a finding that such offence is connected with an anarchical or revolutionary movement."

65. Mr. Shafi :— **Clause 17.**

That for clause 17 the following clause be substituted :—

"17. (*1*) An appeal shall lie from the judgment of the Court to a Full Bench of the High Court consisting of at least five judges.

(*2*) The High Court shall not have any authority to transfer any case from the Court or to make any order under section 491 of the Code or, save as provided in sub-clause (*1*), have any jurisdiction in respect of any proceedings under this Part."

66. Mr. Khaparde :—

That for clause 17 the following clause be substituted :—

"17. (*1*) Any person convicted by a Special Tribunal under this Act may, subject to the provisions of this Act, appeal either against the conviction and sentence of the Court or against the sentence alone, to the Court of Criminal Appeal constituted under this Act, on any ground whether of law or of fact; and the Court of Criminal Appeal shall, subject to the provisions of this Act, have power after hearing the appeal to confirm the conviction and sentence, or to enter an acquittal, or to vary the conviction or sentence. Provided that—

(*a*) the conviction shall not be varied save by substituting a conviction for some less

offence, for which the Special Tribunal had jurisdiction on the trial to convict the appellant; and

(*b*) the sentence shall not be increased.

(*2*) The conviction and sentence as confirmed or varied by the Court of Criminal Appeal shall have effect as if it were the conviction and sentence of the Special Tribunal, and shall be deemed to be the sentence of a Special Tribunal.

(*3*) If the appellant establishes want of jurisdiction in the Special Tribunal, the Court of Criminal Appeal may quash the proceedings.

(*4*) The Court of Criminal Appeal shall have for the purpose of any appeal all the powers and jurisdiction of the Special Tribunal."

67. Mr. Shukul:—

That for clause 17 the following clause be substituted:—

"17. (1) The accused shall have the right of appeal on facts and on points of law to a Full Bench or Full Court of Judges of the High Court consisting of not less than five Judges, excluding such of them as formed the Court which passed the sentence.

(2) In case the High Court does not consist of five Judges excluding the Judges who formed the Court, the Appellate Court shall consist of Judges of the High Court exercising jurisdiction over the area and some other High Court with the consent of the Chief Justice of the latter."

68. Mr. Sarma: —

That to clause 17 the following be added:—

"Provided that where the decision of the Court is that of a majority of the Judges presiding at the trial an appeal shall lie to a Full Bench consisting of not less than five Judges of the High Court and where the High Court consists of a small number of Judges than five the appeal shall be transferred to a High Court consisting of five or more Judges."

69. Mr. Chanda:—

That the following further proviso be added to clause 17:—

"Provided further that—

(*a*) the accused shall have the right of appeal both on facts and on points of law from a capital sentence to a Full Bench or Full Court of Judges of the High Court, consisting of not less than five Judges, none of them having formed the Court which passed such sentence. In case there are not five Judges in the High Court, excluding the Judges who passed the sentence, the Appellate Bench shall be formed of Judges of the High Court in question and some other High Court with the consent of the Chief Justice of the latter; and

(*b*) on a point of law being reserved by the Court on application by the defence or on a certificate being granted by

the Advocate General attached to the High Court concerned, and in cases where there is no such Advocate General, on a certificate by any Advocate General, the matter shall be considered by such Full Bench or Full Courts composed as aforesaid."

70. Mr. Patel :— Clause 18.

That for clause 18 the following clause be substituted :—

18. "Depositions recorded under section 51 of the Code may, in the circumstances specified in that section, be given in evidence at the trial of an accused under this Part." 2/

71. Mr. Khaparde :—

That sub-clause (1) of clause 18 be deleted.

72. Mr. Chanda :—

That in clause 18 (1) for the word "statement" wherever it occurs, the word "evidence" be substituted, and after the words "of the Court" the words "by the sworn testimony of witnesses whom the accused will have the right of cross-examining" be inserted.

73. Mr. Patel :—

That in clause 18 (1), sub-clause (*a*) and the letter and brackets "(*b*)" be deleted.

74. Mr. Shukul :—

That in clause 18 (1) for the words "in the interests of the accused" the words "either by the accused or at his instigation" be substituted.

75. Mr. Chanda :—

That to clause 18, the following provisos be added :—

"Provided that the accused had the right and opportunity to cross-examine such person mentioned in such clause (1) (*a*) :

Provided further that the accused shall have the right of calling evidence to disprove the allegation that the death or disappearance or incapacity has been caused in the interest of the accused."

76. Mr. Chanda :— Clause 19

That to clause *19* (1) the following proviso be added :—

"Provided nevertheless that the accused shall have the right to claim a *de novo* trial if any Judge not having been present throughout the trial finds him guilty."

23 **77. Mr. Chanda :—**

That in Part I after clause 19 the following clauses be inserted :—

"19-A. The Government shall provide for the payment of the reasonable expenses in the case of poor persons charged with murder or sedition for the payment of Counsel required for the defence of a person brought for trial before the Special Court and certified to be so required by such Court.

"19-B. The Court shall have the power to award any amount which seems proper to it as compensation to the accused when it acquits him and finds that there was no reasonable or probable cause for prosecuting him, such compensation being payable by Government unless the Court directs otherwise :

Provided that the award of compensation and receipt thereof by the accused shall be no bar to any suit for damages which the accused may have the right to institute for false and malicious prosecution but in decreeing any damages in such suit, if any, such amount paid as aforesaid shall be deducted."

PART II. **78. Mr. Patel :—**

That Part II be deleted.

79. Mr. Chanda :—

That Part II be deleted.

80. Mr. Sarma :—

That Part II be deleted.

Clause 20. **81. Mr. Chanda :—**

That in clause 20 for the words "in Council" the words "with the consent of the Legislative Council of India" be substituted.

82. Mr. Patel :—

That in clause 20 after the words "he may" the words "with the previous approval of the Indian Legislative Council" be inserted.

83. Mr. Khaparde :—

That in clause 20 after the words "he may" the words "with the concurrence of the Indian Legislative Council" be inserted.

84. Mr. Shukul :—

That to clause 20 the following proviso be added :—

"Provided that such notification shall be laid before the Indian Legislative Council within seven days after the making thereof if the said Council is then sitting and if not sitting, within seven days after the next meeting of the Indian Legislative Council. If within the period of 14 days after the notification has been laid before the Indian Legislative Council and a resolution is carried by the Council, then such notification shall not continue in force, but shall be deemed to have expired. When such notification expires the powers conferred by this Act shall cease to be in force."

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85. Mr. Sarma :—

That to clause 20 the following provisos be added :—

"Provided that no action shall be taken by the Governor General in Council, without giving the Indian Legislative Council or the Legislative Council of the province in respect of which such a notification is proposed to be made an opportunity of expressing its opinion by a resolution passed on the subject.

Provided further that such notification shall at any time after the expiry of one year from the date thereof be withdrawn on the recommendation of the Indian Legislative Council or the Legislative Council of the province in respect of which it may have been made by a resolution passed by three-fifths of the members of either of the said Councils."

86. Mr. Patel :—

That in clause 20 for the words "scheduled offences" the words "offences against the State" be substituted.

87. Mr. Chanda :—

That in clause 20 for the words "scheduled offences" the words "offences under Chapter VI (other than an offence under section 124-A) and sections 131 and 132 of the Indian Penal Code" be substituted.

88. Mr. Chanda :— **Clause 21**

That in clause 21 (1) for the words "by order in writing containing a declaration to that effect give all or any of the following directions, namely: that such persons" the following words be substituted :—

"either itself or through any officer authorised in that behalf apply to the investigating authority hereinafter mentioned having jurisdiction in the area concerned for an order giving directions specified either in clause (*a*) or in clauses (*b*) to (*e*) or in any one of those clauses against any person, and such investigating authority after taking such application into consideration and such other or further materials if any which it may call for may pass an order either calling upon such person to show cause within a certain time named by it why he should not carry out such directions or pass an order calling upon him provisionally to carry out such direction or directions and show cause why such order should not be made absolute."

(*a*) And in the same clause—For the word "shall" in sub-clause (*a*) the words "to execute" be substituted and the word "execute" be deleted.

25 (*b*) For the word "shall" in sub-clauses (*b*) to (*e*) when that word occurs for the first time the word "to" be substituted

(*c*) In sub-clause (*d*) the words "in the opinion of the Local Government" be deleted and the word "reasonably" be inserted before the word "calculated".

89. Mr. Sastri:—

That in clause 21 (1) for the words "may by order in writing containing a declaration to that effect" the following words be substituted:—

"shall place all the materials in its possession relating to his case before a judicial officer not below the rank of a district and sessions judge and take his opinion thereon. After considering such opinion, the Local Government, if it is satisfied that such action is necessary, may, by order in writing containing a declaration to the effect that such person is or has been actively concerned in such area in any movement of the nature referred to in section 20".

90. Mr. Patel:—

That in clause 21 (1) after the words "the Local Government may" the words "with the previous approval of the District and Sessions Judge of the district" be added.

91. Mr. Shukul:—

That in clause 21 (1) after the words "declaration to that effect" the following words be inserted:—

"lay information before a Magistrate of the 1st Class having jurisdiction in the area and the said Magistrate may on being satisfied of the truth of the information by following the procedure laid down in the Criminal Procedure Code for demanding security".

92. Mr. Sarma:—

That in clause 21 (1) after the word "bond" in sub-clause (*a*) the words "in such amounts as may be prescribed," be inserted and sub-clauses (*c*) and (*e*) be deleted.

93. Mr. Patel:—

That for sub-clause (*d*) of clause 21 (1) the following be substituted:—

"(*d*) shall abstain from any act so specified which in the opinion of the Local Government, is likely to lead to the commission of scheduled offences."

94. Mr. Sarma:—

That in clause 21 (2) for the words "may also" the word "shall" be substituted, and after the word "effect" the word "only" be inserted.

95. Mr. Chanda:—

That in clause 21 (1) for the words "give all" the words "give the directions

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in clause (*a*)" and for the words "following directions" the words "directions" in clauses (*b*) to (*e*) be substituted.

96. Mr. Shukul:— Clause 21.

That in Part II, clauses 22 to 31 be deleted.

97. Mr. Chanda:— Clause 23.

That in clause 23, the words "a copy of" and the words "by or under the general or special authority of the Local Government" be deleted, and after the word "all" the word "lawful" be inserted.

98. Mr. Patel:—

That in clause 23 for the words "use all means necessary" the words "use all lawful means reasonably necessary" be substituted.

99. Mr. Chanda:— Clause 24.

That clause 24 be deleted.

100. Mr. Chanda:— Clause 25.

That for clause 25 the following clause be substituted:—

"25. (1) On the day fixed for showing cause by the person in respect of whom an order under section 21 has been passed the investigating authority shall enquire into the matter and shall follow the procedure, as early as practicable, that is prescribed for trails in summons cases excepting that instead of convicting or acquitting the person proceeded against it shall record its conclusions as to whether it is established to its satisfaction that such person is or has been actively concerned in any movement of the nature referred to in section 20, and if so, what in its opinion would be a proper order to pass against him. The investigating authority shall submit their report to the Local Government and direct the said person to appear on a date fixed before such officer as the Local Government directs.

(2) The Local Government on receipt of the report of the investigating authority shall after reciting its findings either discharge him if the finding is in his favour or if the finding is against him pass an order directing him to carry out the direction contained in clause (*a*) or any one of clauses (*b*) to (*e*) of section 21.

(3) Any order under clauses (*b*) to (*e*) of section 21 may be made to take effect upon default by the person concerned.

Provided that if the investigating authority is not satisfied that the person is or has been actively concerned in such area in any movement referred to in section 20, he shall be at once discharged.

(4) The enquiry shall be held in public, provided that the investigating authority may direct that any portion of the proceedings be *in camera*."

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101. Mr. Sarma:—

That in clause 25 (1) after the words as may be" the words "and before the

expiry of seven days from the making of the order" be inserted.

102. Mr. Chanda:—

That to clause 25 (1) the following provisos be added:—

"Provided that the investigating authority shall have the power either of its own motion or on application by the person proceeded against to direct the production of any person whose statement or information may be included in the grounds of action taken by Government as aforesaid; and on the appearance of such person, he shall, if required by the person proceeded against, be put on oath and cross-examined.

"Provided further that if such person does not appear as directed the information or statement made by him will be excluded."

103. Mr. Shafi:—

That in clause 25 (2) after the words "inquiry" the following words be inserted:—

"which may, in its discretion, be in whole or in part."

104. Mr. Chanda:—

That in clause 25 (2) the words "*in camera*" and the words "at some stage of its proceedings" be deleted and the words "personally or by pleader" be inserted after the words "before it".

105. Mr. Patel:—

That in clause 25 (2) for the words "*in camera*" the following words be substituted:—

"which may be *in camera* if such authority for reasons to be recorded in writing so decides."

106. Mr. Khaparde:—

That in clause 25 (2) the words "*in camera*" be deleted, for the word "some" the word "all" be substituted, and after the words "in question" the words "and his legal adviser" be inserted.

107. Mr. Sarma:—

That in clause 25 (2) the words "*in camera*" be deleted and after the words "against him" the words "and the nature of the evidence in so far as it may be disclosed" be inserted, and after the words "have to offer" the words "the evidence he may tender" be inserted.

108. Mr. Patel:—

That in clause 25 (2) for the words "a reasonable opportunity of appearing before it at some stage", the words "to appear before it at every stage" be substituted.

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109. Mr. Chanda :—

That in clause 25 (*2*) after the words "have to offer" the words "and shall summon such witnesses as he desires to call and examine them" be inserted.

110. Mr. Patel :—

That in clause 25 (*2*) after the words "he may have to offer" the words "examine any witnesses he may produce" be inserted.

111. Mr. Shafi :—

That in sub-clause (*2*) of clause 25, after the word "offer" the words "and take any evidence he may have to adduce in his defence" be inserted.

112. Mr. Patel :—

That in clause 25 (*2*) after the words "relevant and reasonable" the following proviso be inserted :—

"Provided that the investigating authority shall, if the person in question applies to him for process to compel the attendance of any witness or the production of any document or thing, issue such process, unless for reasons to be recorded he deems it unnecessary to do so and for this purpose, such authority shall have all the powers conferred by the Code on a Court."

113. Mr. Chanda :—

That the two provisos to clause 25 (*2*) be deleted.

114. Mr. Patel :—

That in the first proviso to clause 25 (*2*) for the words "shall not disclose" the words "may not for reasons to be recorded in writing disclose" be substituted.

115. Mr. Sarma :—

That the second proviso to clause 25 (*2*) be deleted.

116. Mr. Banerjea :—

That in clause 25, the second proviso to sub-clause (*2*) be deleted and the following be inserted as sub-clause (*2a*). :—

"(*2a*) The person in question shall have the right to appear or be represented by pleader in the enquiry."

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117. Mr. Patel :—

That in the second proviso to clause 25 (*2*) for the word "entitle" the word "debar" and for the word "entitled" the word "debarred" be substituted.

118. Mr. Sarma :—

That for the second proviso to clause 2 (*2*) the following be substituted :—

"The accused may in the discretion of the investigating authority be defended by pleader; in such a case the Government shall be entitled to be so represented."

119. Mr. Sarma :—

That at the end of clause 25 (*2*) the following be inserted :—

"An enquiry under this section may, at the discretion of the investigating authority, be held in whole or in part *in camera*, and the provisions of section 11 shall, so far as may be, be applicable to such proceedings."

120. Mr. Khaparde :—

That in clause 25 (*3*) the word "not" be deleted.

121. Mr. Patel :—

That in clause 25 (*3*) for the words "shall not be bound to observe" the words "shall, as far as possible, follow" be substituted.

122. Mr. Sastri :—

That in clause 25 (*3*) for the words "shall not" the words "shall as far as possible" be substituted.

123. Mr. Chanda :—

That in clause 25 (*3*) the words "not be bound to" be deleted.

124. Mr. Khaparde :—

That in clause 25(*5*) for the words "may if he thinks fit" the word "shall" be substituted.

125. Mr. Patel :—

That to clause 25 (*5*) the following be added :—

"In such conclusions the investigating authority shall state clearly whether or not, in its opinion, the person in question is or has been actively concerned in any anarchical or revolutionary movement as alleged by the local Government."

126. Mr. Chanda :—

That ~~the~~ clause 25 (*5*) the following proviso be added :—

"Provided that the investigating authority shall first record its finding as to whether it is satisfied that the person in question is or has been actively concerned in such area in any movement of the nature referred to in section 20 and in case it is not so satisfied the person shall be at once discharged."

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127. Mr. Sarma :—

That in clause 25 (*6*), the word "If" be deleted and for the words "has not completed" the words "shall complete" be substituted and the words from "such authority" to the end of the sub-clause be deleted.

128. Mr. Chanda :—

That in clause 25 (*6*) for the word "may" the word "shall" be substituted.

129. Mr. Chanda :— Clause 26.

That in clause 26 (*1*) for the words "may discharge" the words "if the report shows that such authority is not satisfied that the person is or has been actively concerned in such area in any movement of the nature referred to in section 20 shall discharge" and for the words "or may make" the words "and in other cases may make" be substituted.

130. Mr. Khaparde :—

That in clause 26 (*1*) for the word "may" the word "shall" be substituted and after the words "section 21" the words "if the investigating authority has so recommended" be inserted and for the word "or" the words "and in other cases" be substituted.

131. Mr. Sarma :—

That in clause 26 (*1*) for the words from "or may make" to the word "section" the words "and shall do so, if the investigating authority reports favourably to the persons accused" be substituted.

132. Mr. Patel :—

That in clause 26 (*1*) after the words "is authorised by that section" the words "and justified by the report" be inserted.

133. Mr. Khaparde :—

That in proviso (*a*) to clause 26 (*1*) after the words "that authority" the words "and its reasons therefor" be inserted.

134. Mr. Sarma :—

31.

That in clause 26 (*2*) for the words "on which it was made" the words "of the order made under section 21" be substituted.

135. Mr. Sarma :—

That to clause 26 (*2*) the following be added :—

"The Local Government shall pass its order on the report within a week from the receipt thereof and the interim order shall remain in force till then."

136. Mr. Chanda :—

That in clause 26 (*3*) after the words "again make" the words "a reference to the investigating authority and the same procedure as is laid down in the foregoing sub-clauses of this section shall *mutatis mutandis* be observed" be inserted and the rest of sub-clause be deleted.

137. Mr. Khaparde :—

That in clause 26 (*3*) after the words "again make" the words "on a fresh reference to the investigating authority" be inserted.

138. Mr. Sarma :—

*To be moved if the amendment proposed in clause 26 (*1*) be not accepted.

*That to clause 26 (*3*) the following proviso be added :—

"Provided that when an order was passed under section 26 (*1*) which is not supported by the conclusion of the investigating authority under section 25, an order shall be passed under this clause only after reference to the investigating authority and on the strength of its conclusions."

139. Mr. Shafi :—

That in clause 26, sub-clause (*4*) be deleted and the following be inserted as a further proviso to sub-clause (*3*) :—

"Provided, further, that before an order is made under this sub-section, a copy thereof shall be furnished to the person concerned, who may submit to the Local Government a representation in regard to such order. Any such representation shall be forwarded by the Local Government to the investigating authority for inquiry and report, and the investigating authority, after inquiry conducted in accordance with section 25, shall report thereon, and the Local Government shall consider the report of such authority."

140. Mr. Sarma :—

That to clause 26 (*4*) the following be added :—

"and pass orders in accordance with its conclusions."

Clause 27. **141. Mr. Chanda :—**

That in clause 27, after the words "punishable with" the word "simple" be inserted.

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142. Mr. Patel:—

That in clause 27, for the word "six months" the words "three months" and for the words "one thousand rupees" the words "five hundred rupees" be substituted.

143. Mr. Sarma:— Clause 28.

That in clause 28, after the words "District Magistrate" the words "or Sessions Judge" be inserted.

144. Mr. Patel:— Clause 29.

That in clause 29, for the words "Local Government", wherever these words occur in the said clause, the words "Chief Justice" be substituted.

145. Mr. Banerjea:—

That in clause 29(2) for the words "one shall be a person" the words "two shall be persons" and for the words "a person" the words "an Indian" be substituted.

146. Mr. Patel:—

That in clause 29 (2) for the words "one shall be a person having held" the words "two shall be persons having held" be substituted.

147. Mr. Khaparde:—

That in clause 29 (2) for the words "and one shall" to the end of the sub-clause the words "the remaining two shall be practising Pleaders of not less than 10 years standing and not in the service of the Crown in India" be substituted.

148. Mr. Sarma:—

That in clause 29 (2) for the words from "and one" to the word "India," the words "the remaining two being elected by the non-official Members of the Legislative Council, from among the elected Members."

149. Mr. Patel:—

That in clause 29 (2) for the words "one shall be a person not in the service of the Crown in India" the words "two shall be pleaders, being non-officials and practising for not less than ten years" be substituted.

150. Mr. Chanda:—

That in clause 29 (2) for the word "one" the word "two" be substituted and after the words "in India" in the same sub-clause the words "selected from a panel of six persons nominated by the Provincial Legislative Council" be inserted.

151. Mr. Patel:—

That in clause 29 (*2*) for the words "one shall be a person not in the service of the Crown in India" the words "one shall be a Pleader, being a non-official and practising for not less than ten years" be substituted.

Clause 30. **152. Mr. Chanda :—**

That in clause 30(*1*) after the words "thinks fit" the words "from a panel of twelve persons nominated by the Legislative Council" be inserted.

Part III. **153. Mr. Patel :—**

That Part III be deleted.

153-A. Mr. Chanda :—

That Part III be deleted.

154. Mr. Shukul :—

That Part III be deleted with the exception of the proviso to clause 33 (*1*) (*b*) which is to stand as a separate clause.

Clause 32. **155. Mr. Khaparde :—**

That in clause 32 after the words "he may" the words "with the concurrence of the Indian Legislative Council" be inserted.

156. Mr. Patel :—

That in clause 32 after the words "he may" the words "with the previous approval of the Indian Legislative Council" be substituted.

157. Mr. Chanda :—

That in clause 32 for the words "in Council" the words "with the consent of the Indian Legislative Council" be substituted.

158. Mr. Sarma :—

That to clause 32 the following provisos be added :—

"Provided that no action shall be taken by the Governor General in Council, without giving the Indian Legislative Council or the Legislative Council of the province in respect of which such a notification is proposed to be made an opportunity of expressing its opinion by a resolution passed on the subject :

Provided further that such notification shall at any time after the expiry of one year from the date thereof be withdrawn on the recommendation of the Indian Legislative Council or the Legislative Council of the province in respect of which it may have been made by a resolution passed by three-fifths of the members of either of the said Councils."

Clause 33. **159. Mr. Patel :—**

That in clause 33 (*1*) after the words "has been or is" the word "actively" and after the words "in any schedtiled

offence" the words "connected with any anarchical or revolutionary movement" be inserted.

160. Mr. Patel:—

That in clause 33 (*1*) after the words "the Local Government may" the words "with the previous approval of the District and Sessions Judge of the District" be inserted.

161. Mr. Sastri:—

That in clause 33 (*1*) after the word "Government" where that word occurs for the second time the following be inserted:—

"shall place all the materials in its possession relating to his case before a judicial officer not below the rank of a district and sessions judge and take his opinion thereon. After considering such opinion the Local Government, if it is satisfied that such action is necessary."

162. Mr. Khaparde:—

That in clause 33 (*1*) for the words "may make" the following words be substituted:—

"shall lay information before a Magistrate of the 1st class having jurisdiction in the area and the said Magistrate may on being satisfied of the truth of the information by following the procedure laid down in the Criminal Procedure Code for demanding security make."

163. Mr. Chanda:—

That in clause 33 (*1*) for the words "may make" the words "apply itself or through any officer to the investigating authority having jurisdiction in the matter" be substituted, after the word "person" the word "for" be inserted, and for the words "further by order in writing direct" the words "further apply for an order directing" be substituted.

164. Mr. Chanda:—

That in sub-clause (*a*) of clause 33 (*1*) the words "without warrant" be deleted.

165. Mr. Chanda:—

That in sub-clause (*c*) of clause 33 (*1*) for the words "in the opinion of the Local Government has" the words "*primâ facie* appears to have" be substituted.

166. Mr. Patel:—

That in sub-clause (*c*) of clause 33 (*1*) for the words "prejudicial to the public safety" the words "connected with any anarchical or revolutionary movement" be substituted.

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167. Mr. Patel:—

That in clause 33 (*3*) for the words "use all means necessary" the words

"use all lawful means reasonably necessary" be substituted.

168. Mr. Chanda:—

That in clause 33 (*3*) the word "lawful" be inserted after the word "all".

169. Mr. Chanda:—

That after clause 33 (*3*) the following proviso be inserted:—

"Provided that the investigating authority when ordering the arrest of any person may provide for bail and when the arrested person is produced before it may then admit him to bail."

Clause 34. **170. Mr. Chanda:—**

That clause 34 be deleted.

Clause 37. **171. Mr. Patel:—**

That in clause 37 after the words "with fine" the words "which may extend to one thousand rupees" be inserted.

172. Mr. Sarma:—

That in clause 37 after the word "fine" the words "amounting to one thousand rupees" be inserted.

173. Mr. Chanda:—

That after clause 37 the following new clause be inserted:—

"37-A. When the investigating authority finds that there was no probable or reasonable cause for applying for the arrest of any person or having any place searched, it may after giving notice to, and hearing the prosecution, direct that any compensation be paid to the person and such compensation shall be paid by Government:

Provided that the receipt of such compensation by any person shall not be a bar to his right of bringing any suit for damages against any one for false and malicious prosecution which he might possess: but compensation must be taken into account in passing any decree in such suit."

Clause 38. **174. Mr. Patel:—**

That for sub-clause (*1*) of clause 38 the following be substituted:—

"38 (*1*) On the expiration of the Defence of India (Criminal Law Amendment) Act, 1915, every person in respect of whom an order under rule 3 of the Defence of India (Consolidation) Rules, 1915, was in force immediately before the expiration of that Act and who has in the opinion of the Local Government been concerned in any scheduled offence, shall be deemed to be a person resident in an area in which a notification under section 3 is in force and the provisions of Part I shall apply to every such person accordingly and every person who is on such expiration in confinement in accordance with the provisions of the Bengal State Prisoners Regulation, 1818, shall be deemed to be a person resident in an area in which a notification under section 32 is in force and the provisions of Part III shall apply to every such person accordingly:

Provided that within one month from the expiration of the Defence of India (Criminal Law Amendment) Act, 1915, the Local Government may make any order of restraint which is authorised by Part III in respect of any person who is in confinement in accordance with the provisions of the Bengal State Prisoners Regulation, 1818, and if such an order is so made it shall be deemed to be an order made under section 26 (3) as made applicable by section 36, and the provisions of that Part regarding such an order shall apply accordingly."

175. Mr. Khaparde :—

That in the proviso to clause 38(1), for the words "may make" to the end of the proviso the words "shall either release such person or commence proceedings under Part I" be substituted.

176. Mr. Patel :— Clause 1

That in clause 39 for the words "when a notification issued under section 3, or section 20 or section 32 is cancelled" the following words be substituted :—

"The Governor General in Council may, of his own accord and shall, on the recommendation of the Indian Legislative Council, cancel any notification issued under section 3, or section 20 or section 32 and"

177. Mr. Khaparde :— Clause

That for clause 41 the following clause be substituted :—

"41. In all trials, enquiries and investigations under this Act, the question whether the person charged and the offence alleged is or is not connected with an anarchical or revolutionary movement shall be a question of fact to be determined by the Court or the investigating authority, as the case may be."

178. Mr. Patel :—

That in clause 41 after the words "in any Court" the following words be inserted :—

"but the High Court shall have power to revise any order passed under section 26 or section 36 on the application by or on behalf of the person aggrieved made within 15 days of the date of the said order."

179. Mr. Chanda :—

That in clause 41 the words "suit or" and the words "or other legal proceeding" be deleted.

180. Mr. Patel :— SCHEDU

That for clause (1) of the Schedule the following be substituted :— 37

"(1) Any offence under the following sections of the Indian Penal Code, namely :—sections 121, 121 A., 122, 123, 124, 131 and 132."

181. Mr. Patel :—

That in clause (2) of the Schedule for the words " in the opinion of the Government " the words " in the opinion of the Court or the investigating authority concerned " be substituted.

182. Mr. Sarma :—

That in clause (2) of the Schedule after the words " with any " the words " anarchical or revolutionary " be inserted.

183. Mr. Khaparde :—

That in clause (2)(*a*) of the Schedule the figures and letter " 124-A " be deleted.

184. Mr. Patel :—

That in clause 2 (*a*) of the Schedule, the figures and letters " 124-A., 153-A." be deleted.

185. Mr. Chanda :—

That in clause (2) (*a*) of the Schedule the figures and letters " 124-A." and " 153-A." be deleted.

H. M. SMITH,

Offg. Secy. to the Govt. of India,
Legislative Department.

DELHI ;

The 11th March, 1919.

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SGPI, Delhi—208 LD—27-3-19—100.

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Notification

Dated Delhi, the 16th January, 1919.

Pro. No. 58

~~Endorsed~~ by the LEGISLATIVE DEPARTMENT.

No. 14.—THE Governor General has been pleased, under Rule 23 of the Rules for the Conduct of the Legislative Business of the Governor General, to order the publication in the *Gazette of India* and in the local official Gazette in English, of the following Bill, together with the Statement of Objects and Reasons relating thereto, and the Bill and Statement of Objects and Reasons are accordingly hereby published for general information :—

(Here Bill as published).

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A

BILL

TO

Make provision in special circumstances to supplement the ordinary criminal law, and for the exercise of emergency powers by Government.

WHEREAS it is expedient to make provision that, in special circumstances, the ordinary criminal law should be supplemented and emergency powers should be exercisable by the Government;

And whereas the previous approval of the Secretary of State in Council has been accorded to the making of this law; It is hereby enacted as follows:—

Short title and extent.

1. (*1*) This Act may be called the Criminal Law (Emergency Powers) Act, 191

(*2*) It extends to the whole of British India.

Definitions.

2. (*1*) In this Act, unless there is anything repugnant in the subject or context,—

"Chief Justice" means the Judge of highest rank in a High Court;

"The Code" means the Code of Criminal Procedure, 1898; V of 18

"High Court" means the highest Court of criminal appeal or revision for any local area;

"Offence against the State" means any offence under Chapter VI of the Indian Penal Code, and any attempt or conspiracy to commit, or any abetment of, any such offence; and XLV of 1860.

"Scheduled offence" means any offence specified in the Schedule.

(*2*) All words and expressions used in this Act and defined in the Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them in the Code.

PART I.

Condition of application of Part I.

3. If the Governor General in Council is satisfied that scheduled offences are prevalent in the whole or any part of British India, and that it is expedient in the interests of the public safety to provide for the speedy trial of such offences, he may, by notification in the Gazette of India, make a declaration to that effect, and thereupon the provisions of this Part shall come into force in the area specified in the notification.

Initiation of proceedings.

4. (*1*) Where the Local Government is of opinion that the trial of any person accused of a scheduled offence should be held in accordance with the provisions of this Part, it may order any officer of Government to prefer a written information to the Chief Justice against such person.

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(*2*) No order under sub-section (*1*) shall be made in respect of, or be deemed to include, any person who has been committed under the Code

for trial before a High Court, but, save as aforesaid, an order under that sub-section may be made in respect of any scheduled offence whether such offence was committed before or after the issue of the notification under section 3.

(3) The information shall state the offence charged and so far as known the name, place of residence, and occupation of the accused, and the time and place when and where the offence is alleged to have been committed and such other facts within the knowledge of the prosecution as shall be reasonably sufficient to enable the accused to meet the accusation.

(4) The Chief Justice may by order require any information to be amended so as to supply further particulars of the offence charged to the accused, and shall direct a copy of the information or the amended information, as the case may be, to be served upon the accused in such manner as the Chief Justice may direct.

Constitution of Court.

5. Upon such service being effected, and on application duly made to him, the Chief Justice shall nominate three of the High Court Judges (hereinafter referred to as the Court) for the trial of the information and shall fix a date for the commencement of the trial:

Provided that, when the total number of Judges of the High Court does not exceed three, the Chief Justice shall nominate not more than two such Judges, and shall complete the Court by the nomination of one or, if necessary, two persons of either of the following classes, namely :—

(a) persons who have served as permanent Judges of the High Court; or

(b) with the consent of the Chief Justice of another High Court, persons who are Judges of that High Court.

Place of sitting.

6. The Court may sit for the whole or any part of a trial at such place or places in the province as it may consider desirable:

Provided that the Governor General in Council, if he is satisfied that such a course is expedient in the interests of justice, may, by notification in the Gazette of India, direct that the Court shall sit for the whole or any part of a trial at such place or places as he may specify in the notification.

Application of Code of Criminal Procedure subject to this Part.

7. The provisions of the Code shall apply to proceedings under this Part, in so far as they are not inconsistent with the provisions therein contained, and such proceedings shall be deemed to be proceedings under the Code, and the Court shall have all the powers conferred by the Code on a Court of Session exercising original jurisdiction.

Trial.

8. The trial shall be commenced by the reading of the information, and thereafter the Court shall, subject to the provisions of this Part, in trying the accused, follow the procedure prescribed by the Code for the trial of warrant cases by Magistrates.

Adjournment after charge.

9. If a charge is framed, the accused shall be entitled to ask for an adjournment for ten days, or any less period that he may specify, and the Court shall comply with his request.

10. The Court shall be required to make a memorandum only of the substance of the evidence of each witness examined and, subject to the adjournment provided for by section 9, shall not be bound to adjourn any trial for any purpose, unless such adjournment is in its opinion necessary in the interests of justice.

Record of evidence.

11. The Court, if it is of opinion that such a course is necessary in the public interest or for the protection of a witness, may prohibit or restrict in such way as it may direct the publication or disclosure of its proceedings or any part of its proceedings.

Prohibition or restriction of publication of reports of trial.

12. (*1*) No questions shall be put by the Court to the accused in the course of a trial under this Part until the close of the case for the prosecution. Thereafter, and before the accused enters on his defence, the Court shall call upon him to state whether he intends to give evidence on oath or not, and shall at the same time inform him that if he does so, he will be liable to cross-examination. Unless the accused then states that he intends to give evidence on oath, the Court may at any time thereafter question the accused generally on the case in accordance with the provisions of section 342 of the Code.

Examination of accused.

(*2*) If when so called upon, the accused states that he intends to give evidence on oath, the Court shall not at any subsequent stage put any question to him :

Provided that if the accused does not so give evidence, then, after the witnesses for the defence have been examined, the Court may question the accused generally on the case in accordance with the provisions of the said section.

(*3*) If the accused gives evidence on oath, the following rules shall be observed in regard to his cross-examination, namely :—

(*a*) He may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged.

(*b*) He shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of, or has been charged with, any offence other than that with which he is then charged, or has a bad character, unless—

(*i*) proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged, or

(*ii*) witnesses for the prosecution have been cross-examined with a view to establish his own good character, or he has given evidence of his good character, or the nature or the conduct of the defence is such as to involve imputations on the character of the witnesses for the prosecution, or

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(*iii*) he has given evidence against any other person charged with the same offence.

Right of reply.

13. If the accused or any one of the accused calls and examines any witness, the right of final reply shall lie with the prosecution, but in all other cases with the accused :

Provided that the examination of an accused as a witness shall not of itself confer the right of final reply on the prosecution.

Differences of opinion.

14. In the event of any difference of opinion between the members of the Court, the opinion of the majority shall prevail.

Conviction for non-scheduled offence.

15. If in any trial under this Part it is proved that the accused has committed any offence, whether a scheduled offence or not, the Court may convict the accused of that offence although he was not charged with it.

Sentence.

16. The Court may pass upon any person convicted by it any sentence authorised by law for the punishment of the offence of which such person is convicted, and no order of confirmation shall be necessary in the case of any sentence passed by it.

Exclusion of interference of other criminal Courts.

17. The judgment of the Court shall be final and conclusive and, notwithstanding the provisions of the Code or of any other law for the time being in force, or of anything having the force of law by whatsoever authority made or done, there shall be no appeal from any order or sentence of the Court, and no High Court shall have authority to revise any such order or sentence or to transfer any case from such Court, or to make any order under section 491 of the Code or have any jurisdiction of any kind in respect of any proceedings under this Part :

Provided that nothing in this section shall be deemed to affect the powers of the Governor General in Council or of the Local Government to make orders under section 401 or 402 of the Code in respect of any person sentenced by the Court.

Special rules of evidence.

18. (*1*) Notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872, where— I of 1872

(*a*) the statement of any person has been recorded by a Magistrate, and such statement has been read over and explained to the person making it and has been signed by him, or

(*b*) the statement of any person has been recorded by the Court, but such person has not been cross-examined,

such statement may be admitted in evidence by the Court if the person making the same is dead or cannot be found or is incapable of giving evidence, and the Court is of opinion that such death, disappearance or incapacity has been caused in the interests of the accused.

(*2*) Depositions recorded under section 512 of the Code may, in the circumstances specified in that section, be given in evidence at the trial under this Part of an accused.

19. The Chief Justice may from time to time make rules providing for—

Power to make rules.

(1) the appointment and powers of a President of the Court, and the procedure to be adopted in the event of any Judge of the Court being prevented from attending throughout the trial of an accused; and

(2) any matters which appear to him necessary for carrying into effect or supplementing the provisions of this Part preliminary or ancillary to trials.

PART II.

20. If the Governor General in Council is satisfied that movements which are, in his opinion, likely to lead to the commission of offences against the State are being extensively promoted in the whole or any part of British India, he may, by notification in the Gazette of India, make a declaration to that effect, and thereupon the provisions of this Part shall come into force in the area specified in the notification.

Condition of application of Part II.

21. (*1*) Where, in the opinion of the Local Government, there are reasonable grounds for believing that any person is or has been actively concerned in such area in any movement of the nature referred to in section 20, the Local Government may, by order in writing containing a declaration to that effect, give all or any of the following directions, namely: that such person—

Powers exercisable when Part II is in force.

(*a*) shall, within such period as may be specified in the order, execute a bond with or without sureties to be of good behaviour for such period not exceeding one year as may be so specified;

(*b*) shall notify his residence and any change of residence to such authority as may be so specified;

(*c*) shall remain or reside in any area in British India so specified;

provided that, if the area so specified is outside the province, the concurrence of the Local Government of that area to the making of the order shall first have been obtained;

(*d*) shall abstain from any act so specified which, in the opinion of the Local Government, is calculated to disturb the public peace or is prejudicial to the public safety; and

(*e*) shall report himself to the police at such periods as may be so specified.

(*2*) Any order under clauses (*b*) to (*e*) may also be made to take effect upon default by the person concerned in complying with an order under clause (*a*).

22. An order made under section 21 shall be served on the person in respect of whom it is made in the manner provided in the Code for service of summons, and upon such service such person shall be deemed to have due notice thereof.

Service of orders under section 21.

Enforcement of orders.

23. The Local Government and every officer of Government to whom a copy of any order made under section 21 may be directed by, or under the general or special authority of, the Local Government, may use any and every means to enforce compliance with the same.

Interim nature of order made by Local Government.

24. An order made under section 21 shall only continue in force for a period of one month, unless it is extended by the Local Government as hereinafter provided in this Part.

Reference to investigating authority.

25. (*1*) When the Local Government makes an order under section 21, such Government shall, as soon as may be, forward to the investigating authority to be constituted under this Act a concise statement in writing setting forth plainly the grounds on which the Government considered it necessary that the order should be made, and shall lay before the investigating authority all material facts and circumstances in its possession in support of its action.

(*2*) The investigating authority shall then hold an inquiry *in camera* for the purpose of ascertaining what, in its opinion, having regard to the facts and circumstances adduced by the Government, appears against the person in respect of whom the order has been made. Such authority shall in every case allow the person in question a reasonable opportunity of appearing before it at some stage in its proceedings and shall, if he so appears, explain to him the nature of the charge made against him and shall hear any explanation he may have to offer, and may make such further investigation (if any) as appears to such authority to be relevant and reasonable :

Provided that the investigating authority shall not disclose to the person whose case is before it any fact the communication of which might endanger the public safety or the safety of any individual :

Provided further that nothing in this sub-section shall be deemed to entitle the person in question to appear or to be represented before the investigating authority by pleader, nor shall the Local Government be so entitled.

(*3*) Subject to the provisions of sub-section (*2*), the inquiry shall be conducted in such manner as the investigating authority considers best suited to elicit the facts of the case; and in making the inquiry, such authority shall not be bound to observe the rules of the law of evidence.

(*4*) On the completion of the inquiry, the investigating authority shall report in writing to the Local Government the conclusions at which it has arrived.

(*5*) If the investigating authority has not completed the inquiry within the period for which the duration of the order is limited by section 24, such authority may recommend to the Local Government that the period of duration of the order shall be extended for such period as it may consider necessary, and on such a recommendation, the Local Government may extend the duration of the order accordingly.

Disposal of report of investigating authority.

26. (*1*) On receipt of the report of the investigating authority, the Local Government may discharge the order made under section 21, or may pass any

order which is authorised by the terms of that section :

Provided that—

(*a*) any order so passed shall recite the finding of the investigating authority ; and

(*b*) a copy of such order shall be furnished to the person in respect of whom it is made.

(*2*) No order made under sub-section (*1*) shall continue in force for more than one year from the date on which it was made, but the Local Government may, if it is satisfied that such a course is necessary in the interests of the public safety, on the expiry of any such order, again make any order in respect of the person to whom it related which is authorized by section 21.

(*4*) No order made under sub-section (*2*) shall continue in force for more than one year from the date on which it was made, but on its expiry may be renewed by the Local Government for a further period not exceeding one year :

Provided that any order so made or renewed may at any time be discharged, or may be altered by the substitution of any other order authorised by section 21, and in that case no further reference to the investigating authority shall be necessary.

Penalty for disobedience to order.

27. If any person fails to comply with, or attempts to evade, any order (other than an order to furnish security) made under the provisions of section 21 or section 26, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Provisions as to bonds.

28. The provisions of section 514 of the Code shall apply to bonds executed under the provisions of this Part, with this modification that the powers conferred by that section on the Court shall be exercisable by any District Magistrate or Chief Presidency Magistrate, on application made on behalf of the Local Government.

Investigating authorities.

29. (*1*) The Local Government shall appoint one or more investigating authorities for the purposes of this Part.

(*2*) Every investigating authority shall be appointed by order in writing, and shall consist of three persons, of whom one shall be a person having held judicial office not inferior to that of a District and Sessions Judge, and one shall be a person not in the service of the Crown in India.

(*3*) The Local Government may by like order appoint persons to fill casual vacancies occurring by reason of death, resignation of office or otherwise on any investigating authority, but in so doing shall observe the provisions of sub-section (*2*).

Visiting Committees.

30. The Local Government shall by order in writing appoint such persons as it thinks fit to be Visiting Committees for the purposes of this Part, and shall by rules prescribe the functions which these Committees shall exercise :

Provided that, in making such rules, provision shall be made for periodical visits to persons under restraint under the provisions of this Part :

Provided further that a person in respect of whom an order has been made under section 21

section 26 requiring him to abstain from any ecified act or to report himself to the police all not be deemed to be under restraint for the rposes of this section.

Power to make rules by Local Government.

31. (*1*) The Local Government may make rules providing for the procedure to be followed regarding the notification of residence and reports to the police by persons in respect of whom orders have been made under section 21 or section 26.

(*2*) All rules made under sub-section (*1*) shall be published in the local official Gazette, and on such publication shall have effect as if enacted in this Part.

PART III.

Condition of application of Part III.

32. If the Governor General in Council is satisfied that scheduled offences have been or are being committed in the whole or any part of British India to such an extent as to endanger the public safety, he may, by notification in the Gazette of India, make a declaration to that effect, and thereupon the provisions of this Part shall come into force in the area specified in the notification.

Powers exercisable when Part III is in force.

33. (*1*) Where, in the opinion of the Local Government, there are reasonable grounds for believing that any person has been or is concerned in such area in any scheduled offence, the Local Government may make in respect of such person any order authorised by section 21, and may further by order in writing direct—

(*a*) the arrest of any such person without warrant;

(*b*) the confinement of any such person in such place and under such conditions and restrictions as it may specify; and

(*c*) the search of any place specified in the order which, in the opinion of the Local Government, has been, is being, or is about to be, used by any such person for any purpose prejudicial to the public safety.

(*2*) The arrest of any person in pursuance of an order under clause (*a*) of sub-section (*1*) may be effected at any place where he may be found by any police-officer or by any other officer of Government to whom the order may be directed.

(*3*) An order for confinement under clause (*b*) or for search under clause (*c*) of sub-section (*1*) may be carried out by any officer of Government to whom the order may be directed, and such officer may use any and every means to enforce the same.

Arrest.

34. Any person making an arrest in pursuance of an order under clause (*a*) of section 33 (*1*) shall forthwith report the fact to the Local Government and, pending receipt of the orders of the Local Government, may by order in writing commit any person so arrested to such custody as the Local Government may by general or special order specify in this behalf:

Provided that no person shall be detained in such custody for a period exceeding fifteen days.

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35. An order for the search of any place issued under the provisions of clause (*c*) of section 33 (*1*) shall be deemed to be a search warrant issued by the District Magistrate having jurisdiction in the place specified therein, and shall be sufficient authority for the seizure of anything found in such place which the person executing the order has reason to believe is being used, or is likely to be used for any purpose prejudicial to the public safety, and the provisions of the Code, so far as they can be made applicable, shall apply to searches made under the authority of any such order and to the disposal of any property seized in any such search.

Search.

36. Where an order (other than an order for arrest or search) has been made under section 33, the provisions of sections 22 to 26 shall apply in the same way as if the order were an order made under section 21, save that, on receipt of the report of the investigating authority, the Local Government may, subject to the conditions prescribed by section 26, make any order which is authorized by section 33, and sections 22 to 26 and 28 to 31 shall be deemed to be included in this Part.

Application of Part II, procedure.

37. If any person fails to comply with, or attempts to evade, any order made under section 33 or section 36 other than an order to furnish security, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Penalty for disobedience to orders under this Part.

PART IV.

38. (*1*) On the expiration of the Defence of India (Criminal Law Amendment) Act, 1915, every person in respect of whom an order under rule 3 of the Defence of India (Consolidation) Rules, 1915, was in force immediately before the expiration of that Act, and who has in the opinion of the Local Government been concerned in any scheduled offence, or who is on such expiration in confinement in accordance with the provisions of the Bengal State Prisoners Regulation, 1818, shall be deemed to be a person resident in an area in which a notification under section 32 is in force, and the provisions of Part III shall apply to every such person accordingly, save that no reference to the investigating authority shall be necessary.

IV of 1915.

III of 1818.

Persons already under executive control.

(*2*) On the expiration of the Ingress into India Ordinance, 1914, as continued in force by the Emergency Legislation Continuance Act, 1915, any person in respect of whom an order was in force immediately before such expiration under section 2 of that Ordinance read with clause (*b*) or clause (*c*) of sub-section (*2*) of section 3 of the Foreigners Ordinance, 1914, shall be deemed to be a person resident in an area in which a notification under section 20 is in force, and the provisions of Part II shall apply to every such person accordingly, save that no reference to the investigating authority shall be necessary.

V of 1914.

I of 1915.

III of 1914.

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PART V.

Effect of cancellation of notifications under sections 3, 20 or 32.

When a notification issued under section 3 or section 20 or section 32 is cancelled, such cancellation shall not affect any trial, investigation or order commenced or made under this Act, and such trial, investigation or order may be continued or enforced, and on the completion of any such investigation, any order which might otherwise have been made may be made and enforced, as if such notification had not been cancelled.

Effect of orders made under Parts II and III outside notified area.

40. (*1*) An order made under Part II or Part III directing a person to remain or reside in any area in British India outside the area in which such Part is in force shall be as valid as and enforceable in like manner as if such Part were in force throughout British India.

(*2*) An order made under clause (*a*) of section 33 (*1*) for the arrest of any person may be executed at any place in British India outside the area in which Part III is in force, and the same procedure shall be followed as if Part III was in force throughout British India :

Provided that, if the arrest is made outside the province of the Local Government which made the order, the report required by section 34 shall be made to that Local Government, and the period of detention limited by the proviso to that section shall be extended to thirty days.

Orders under this Act not to be called in question by the Courts.

41. No order under this Act shall be called in question in any Court, and no suit or prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Powers of Act to be cumulative.

42. All powers given by this Act shall be in addition to, and not in derogation of, any other powers conferred by or under any enactment, and all such powers may be exercised in the same manner and by the same authority as if this Act had not been passed.

THE SCHEDULE.

(*See section 2.*)

(1) Any offence under Chapter VI and sections 131 and 132 of the Indian Penal Code ; XLV of 1860.

(2) Any of the following offences, if, in the opinion of Government, such offence is connected with any movement endangering the safety of the State, namely :—

(*a*) any offence under sections 148, 153A, 302, 304, 307, 308, 326, 327, 329, 332, 333, 385, 386, 387, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 431, 435, 436, 437, 438, 440, 454, 455, 457, 458, 459, 460, and 506 of the Indian Penal Code ; XLV of 1860.

(*b*) any offence under the Explosive Substances Act, 1908 ; VI of 1908.

(*c*) any offence under section 20 of the Indian Arms Act, 1878. XI of 1878.

(3) Any attempt or conspiracy to commit or any abetment of any of the above offences.

STATEMENT OF OBJECTS AND REASONS.

In December, 1917, the Governor General in Council, with the approval of the Secretary of State, appointed a Committee—

(1) to investigate and report on the nature and extent of the criminal conspiracies connected with the revolutionary movement in India;

(2) to examine and consider the difficulties that have arisen in dealing with such conspiracies, and to advise as to the legislation, if any, necessary to enable Government to deal effectively with them.

The Committee advisedly contained a strong judicial element, and was presided over by Sir Sidney Rowlatt, K.C.S.I., a judge of the King's Bench Division of His Majesty's High Court of Justice. This Committee submitted its report on the 15th April, 1918. The report was unanimous, and the Government of India have decided to introduce Bills to give effect to the recommendations of the Committee.

The present Bill gives effect to the recommendations contained in Chapter XVII of the Report in so far as they relate to Emergency measures (Punitive), Emergency measures (Preventive) and provision for existing danger. It is divided into five parts. Under the first three parts (*i*) the punitive measures, (*ii*) preventive measures of a mild character, (*iii*) preventive measures of a more stringent type, can each in turn be called into operation as recommended in paragraph 180 of the Report. Part IV makes provision for existing danger on the lines suggested in paragraph 196 of the Report, and Part V deals with certain miscellaneous matters.

The object has been to follow the recommendations of the Committee as closely as possible, and for facility of reference relevant extracts from the report are printed below:—

"180. Further, as we have said, the powers we suggest will be both Punitive and Preventive and the latter will be of two degrees varying in stringency. The scheme ought to be capable of being called into operation in compartments and it is worth considering whether the necessary notifications might not be required to declare a higher degree of public danger to justify the use of some powers than of others. We venture to lay some stress on the desirability from every point of view of the Government being able to take mild measures early. This is hampered if they are obliged, in order to take mild measures, to declare a state of affairs of great seriousness. On the other hand, they should not have authority to assume power to take stringent measures without pledging themselves to the declaration of a crisis of proportionate gravity. We have already intimated that we do not feel called upon to draft any form of notification but, to illustrate our suggestion of progressive notifications, if we may use that phrase, it might be sufficient, in order to call our punitive measures into force, to declare that seditious offences are prevalent and that it is expedient to provide for their speedy trial under the provisions of the Act, while for the invocation of the mild form of preventive measures it might be obligatory to declare that seditious movements were being extensively promoted, and for the more stringent preventive measures, that seditious outrage was occurring to a degree endangering public safety—or some such formulæ."

Emergency powers of different degrees.

"The notifications should of course be capable of application to particular provinces of smaller areas."

"181. Coming now to the measures themselves, we are of opinion that provision should be made for the trial of seditious crime by Benches of three Judges without juries or assessors and without preliminary commitment proceedings or appeal. In short, the procedure we recommend should follow the lines laid down in sections 5—9 inclusive of the Defence of India Act. It should be made clear that section 512 of the Code of Criminal Procedure (relating to the giving in evidence under certain circumstances of depositions taken in the absence of an absconding accused) applies to these trials, it having, we understand, been questioned whether section 7 of the Defence of India Act has that effect."

Emergency provisions for trials.

"We think it necessary to exclude juries and assessors mainly because of the terrorism to which they are liable. But terrorism apart, we do not think they can be relied upon in this class of case. They are too much inclined to be affected by public discussion. We could give instances which have come before us, where we think there have been miscarriages of justice owing to the causes above mentioned. We may further point out that the trial of such cases without jury or assessors was introduced by the Indian Criminal Law Amendment Act, 1908."

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"As regards the procedure and the absence of right of appeal, we think it essential that the delay involved in commitment proceedings and appeal be avoided. It is of the utmost importance that punishment or acquittal should be speedy both in order to secure the moral effect which punishment should produce and also to prevent the prolongation of the excitement which the proceedings may set up. Furthermore, the delays involved by commitment proceedings and the double examination of witnesses increase the chance of the witnesses being intimidated, add to the hardships involved in their attendance with the consequence of making them less ready to come forward, and also afford time for them to forget the facts."

"We think, however, that there is one important amendment to be made in the procedure. Under the temporary scheme now in operation charges are formulated after the evidence for the prosecution has been closed. In our opinion some expedient must be found for defining the issues and communicating them to the accused a reasonable time before he has to meet or rebut them. We do not apprehend how an accused can deal relevantly either in cross-examination or by preparation of evidence with a case not formulated."

"To meet this difficulty we suggest some such scheme as the following: It is a compromise between having no preliminary proceedings and the ordinary full commitment proceedings. We are told that some Special Tribunals have proceeded to some extent on these lines with satisfactory results. It seems quite fair to the accused :—

(*a*) Commitment proceedings to be abolished in these cases.

(*b*) Proceedings to start with a detailed written complaint to be drawn up by the Government Prosecutor setting out full particulars of what is intended to be proved against each accused.

(*c*) The prosecution witnesses to be first examined in chief, but the accused not to be called upon to cross-examine at this stage.

(*d*) The charge to be framed with regard to such of the accused against whom there is *primâ facie* evidence.

(*e*) The case should be adjourned and the Court should fix the period of adjournment suitable to each case, but such period should not be less than ten days.

(*f*) The accused to remain in the "custody of the Court" as opposed to the "custody of the police," or in other words, the Superintendent of the Jail should be under the directions of the Court so far as the accused are concerned. This does not indicate any real change, but perhaps an insertion of a provision of this nature will have the effect of silencing much mischievous criticism.

(*g*) The police papers will of course be placed before the Court. The Court after going through the papers may, if it thinks right, allow copies of some of these papers to the accused. Of course in this matter the Court will have absolute discretion, and the Court may refuse to allow copies of any of the police papers to the accused.

(*h*) At the expiry of the period of adjournment the cross-examination of the witnesses and the rest of the trial will proceed."

"182. While, however, we recommend in substance the procedure established under the Defence of India Act, we think the constitution of the tribunals as provided by these Acts should be altered. It seems to us inadvisable that these tribunals should to any extent be composed of persons not already members of the judiciary but selected by the executive for the purpose of the specific case. Nothing that we have seen suggests that the special tribunals hitherto appointed have been unfair towards the accused, but we think the objections in principle cannot be overlooked. Moreover, as the right of appeal is taken away, the tribunals should be of the highest strength and authority. They should be composed of High Court or Chief Court Judges selected by the head of the Court. It is true that this might mean a grave demand upon these Benches. But, after all, there is no judicial work so important as that with which we are dealing or so imperatively calling for a tribunal of the highest authority. Substitutes can be appointed for the Judges called away, and if there is no power it can be obtained. Substitutes, however, ought not to try these cases."

Composition of Courts.

"183. It has been brought to our attention that the bringing of witnesses to Calcutta or other seats of a High or Chief Court may be attended with inconvenience and may be a source of alarm and confusion to country witnesses. This must arise just as much if the witnesses are brought to such city to attend a special tribunal as at present constituted. If, on the other hand, the three gentlemen composing such tribunal can sit elsewhere than in such city, it seems to us that the three Judges can do so."

Place of trial.

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"184. A question to which we have given much consideration is whether the accused should be entitled to give evidence on his own behalf in these cases, subject to the consequences now provided by the law of England. This has been found to afford valuable protection to an innocent prisoner, while exposing sham defences and unfounded suggestions."

Testimony of accused.

"The principle upon which an accused person cannot at present give evidence is that he is interested and interested persons were incompetent as witnesses by the Common Law in all cases, civil as well as criminal. This incompetency was gradually removed in England until the only remnant of the original rule was the case of a person under criminal trial. The incompetency in this case also was gradually removed as regards one crime after another until in 1898 * it was swept away in all cases by an Act of general application. The change was really the concession of a new facility to prisoners, though doubtless it had its inconveniences for persons really guilty. It was hedged about with important safeguards from the prisoner's point of view of which the following are the most notable :—

*61 and 62 Vict., c. 36.

(*a*) he cannot be called except with his own consent;

(*b*) if called, he cannot be asked questions as to his character, including previous convictions, unless either—

(*i*) the facts put would be evidence against him in chief, independently of the Act, as showing design or the like, or

(*ii*) he has given evidence of his own good character or the character of witnesses for the prosecution has been attacked on his behalf.

In other words, there is a special code limiting his examination, and if the principle were introduced in India, the application of sections inconsistent with it, such as section 165 of the Indian Evidence Act, would have to be excluded."

"This new principle, at first much mistrusted, has been found to work well in England; and in India where, as is so frequently the case, the grave issue arises whether a confession has been improperly extorted, it would seem much more conducive to the discovery of the truth that the accused should be entitled to depose on oath to what has occurred subject to cross-examination than that it should be left to suggestion. And so also as to other issues."

"No doubt only an experienced Court should try cases under these conditions in order to make sure that an ignorant prisoner does not misunderstand his position, and is not unfairly dealt with. This safeguard is ensured when the cases come before three Judges of the highest rank, and upon the whole we think the provision should be introduced. If it were a question of its general application we should, having regard to the abovementioned considerations, be against it."

"A suggestion made to us that the Court should be at liberty to put any question it pleases to an accused, even though he does not tender himself as a witness, is one that we cannot approve of."

"185. If our proposal is accepted that there shall be no commitment proceedings, the re-enactment or retention of section 13 of the Criminal Law Amendment Act (XIV of 1908) in its present form will not be appropriate. It is, however, necessary that the object which that section was intended to attain, namely, the protection of important witnesses and the perpetuation of their testimony, should be provided for. We think the statements of dead or absent witnesses made at either of two stages of the investigation should be made available for use by the Court, namely, (1) statements proved to have been made to a police officer not below the rank of Superintendent, where such statements have been recorded by such officer and read over and explained to the person making it and signed by him; (2) statements of witnesses made at the trial and not yet cross-examined upon—the condition making them admissible being in each case the same, namely, the belief of the Court that the death or absence of the deponent has been caused in the interests of the accused."

Perpetuation of testimony in particular circumstances.

"186. The Court should have the power, where and so far as they think it advisable in the public interests or for the safety of a witness, to exclude the public or any person from the hearing or any part of it and to prohibit any disclosure of their proceedings or any part of them either wholly or save as authorised by the tribunal, any such disclosure or purported disclosure being dealt with as a contempt of Court. This should not be done as a matter of course, but only where the tribunal is satisfied as to the necessity of it."

Other suggestions.

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"The cases to be tried subject to the provisions above sketched out will be such as are ordered to be so tried by Government, the power to make such orders being limited to certain classes of offences to be named in a schedule. This was the scheme of the Criminal Law Amendment Act, 1908, the schedule to which might be adopted."

* * * * *

"188. The powers at present temporarily possessed by the Government are so far as material for the present purpose to be found in rules 3—7 inclusive and 12-A under the Defence of India Act, 1915. We do not refer for the present to the Foreigners Ordinance, 1914, or the Ingress into India Ordinance, 1914. * * * * Shortly stated, their effect is to give power to require persons by executive order to remain in any area to be specified or not to enter or remain in any such area, with penalties for breach of such requirement. These orders may be made and served on the person affected, whereupon they become binding upon him, or the person may be arrested without warrant and detained for a period not exceeding in all one month, pending an order of restriction. There is also a power of search under search warrant. It will be observed there is no provision for an examination of the cases of such persons. The decision lies solely with the Local Government. There is also the power of confinement under Regulation III of 1818."

Existing temporary powers.

"189. We think that provision ought to be made for calling into operation (in the last resort and subject to safeguards) powers going to the full extent of those above quoted."

Scope of our proposals.

"But while we feel bound to formulate such a scheme, we think that the whole of it must be subject to the observance of four main principles—

(*i*) No interference with liberty must be penal in character. Nothing in the nature of conviction can be admitted without trial in strict legal form. If in the supreme interests of the community the liberty of individuals is taken away, an asylum must be provided of a different order from a jail.

(*ii*) Any interference with liberty must be safeguarded by an inquiry which, though circumstances exclude the possibility of its following forensic forms, must be judicial in the sense that it must be fair and impartial and as adequate as it can be made.

(*iii*) Every order (which should be made by the Local Government) authorising such interference must recite the holding of such inquiry and declare that, in the opinion of the Local Government, the measures ordered are necessary in the interests of public security.

(*iv*) The order must be made for a limited time only (say, not exceeding a year) and must be renewable only by a new order (not necessarily a new inquiry) reciting that the renewal is necessary in the interests of public security."

"190. We now proceed to elaborate, but without using drafting language or going into every detail, the scheme we suggest."

Two grades of powers desirable.

"We think, as we have already indicated, that the powers to be acquired should be of two grades capable of being called into operation separately, possibly under different forms of notification."

"The first group of powers should be of the following nature:—

(*i*) to demand security with or without sureties;

(*ii*) to restrict residence or to require notification of change of residence;

(*iii*) to require abstention from certain acts, such as engaging in journalism, distributing leaflets or attending meetings;

(*iv*) to require that the person should periodically report to the police.

The second group of powers should be—

(*i*) to arrest;

(*ii*) to search under warrant;

(*iii*) to confine in non-penal custody."

"It is not conceivable that the second group of powers would be called into play without the first. Therefore after arrest and search there would be no objection (if thought sufficient) to making an order under the first group of powers."

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"191. An 'investigating authority' or 'authorities' should be constituted, as to which we shall say more later on."

Creation of an investigating authority.

"If the first group of powers only is in force, the Government before making a final order should be required to refer the case to the investigating authority. They should, however, have power to make an *interim* order for a limited time. If the second group is in force, the person might be arrested and kept in custody for a time to be limited before the reference and thereafter pending the reference."

"The duty of the investigating authority will be to inquire *in camera* upon any materials which they may think fit and without being bound by rules of evidence. They would send for the person and tell him what is alleged against him and investigate the matter as fairly and adequately as possible in the manner of a domestic tribunal. It would not be necessary to disclose the sources of information, if that would be objectionable from the point of view of other persons. No advocates would be allowed on either side or witnesses formally examined, nor need the person whose case is under investigation be present during all the inquiry. Should such person indicate that other persons or any other inquiries may throw light on the matter from his point of view, the investigating authority would endeavour to test the suggestion if it seems relevant and reasonable. At the close of the inquiry the investigating authority would certify their conclusion to the Local Government."

"It will be noticed that though we have suggested the procedure to be followed by the investigating authority, we have not yet indicated our view as to what it should inquire into or the nature of its conclusions.

"192. This seems to us the most difficult of all the matters with which we have had to deal, and yet it is one as to which exactness is imperative. We think what is to be aimed at is that the order of restriction or the like should be executive, but on a basis of fact ascertained judicially (in the sense explained) by the investigating authority. If the investigating authority are to deal with the question of the order to be made, they acquire power without the responsibility for the results. The executive are responsible for the maintenance of law and order. The worst solution of all is that the investigating authority should recommend and that the executive should be able to disregard the recommendation. If, however, the investigating authority is to confine itself to facts, what is the question of fact to be? The states of fact contemplated cannot be reduced to definitions like crimes such as murder and so on. If they could, no list that we can contemplate would cover the ground. Under these circumstances we suggest the following solution. Let the Government propound to the Committee in plain language what they suggest the man has done or is doing or is likely to do, and let the authority return in plain language what they find upon the subject. Then let the Government recite that finding in its order and proceed to deal with the man as it thinks necessary. The great object will thus be attained of making it known exactly what is ascertained against the man in fact apart from executive conclusion, but the responsibility for action will still rest solely on the Government. It is for consideration whether the order should not be published."

Scope of investigation.

"The nature of the above suggestion explains why we have used the term "Investigating Authority" instead of "Advisory Committee". The use of the latter term seems to condemn one in advance to the embarrassments from which it is the whole object to escape."

"193. If the functions of the investigating authority are such as we have described, the difficulty of its composition is minimised. For an inquiry in a judicial spirit into facts knowledge and experience are the requisites. It has been suggested to us that the judicial, the executive and the non-official elements should be represented upon the body or bodies in question. Having indicated the functions which we recommend for the investigating authority, we do not feel that we are driven to give our views as to its exact composition. But we think we may say as based upon the experience gained in the course of our labours that one member should be a non-official Indian selected for his knowledge of the people."

Composition of the authority.

"194. We suggest one more provision to be made in this scheme of preventive measures. We think there should be Visiting Committees to report upon the condition of persons restricted in residence or in custody. We do not go into the question of the composition of these Committees. This may well vary in different parts of India and possibly in different parts of the same province or with reference to different communities. We were much struck by the useful work of this kind that can be done by Committees, working in very small areas, in the Punjab. Machinery so satisfactory may not be possible elsewhere. The Committees appointed must, of course, be persons who are prepared to accept the scheme and work it effectually though sympathetically."

Visiting Committees.

* * * * * *

"196. The scheme above set forth is, as has already been pointed out, designed for emergencies regarded as contingent. The powers involved are, therefore, to be dormant till the event occurs."

Treatment of existing offenders.

"There are, however, a limited class of persons, namely, those who have been involved in the troubles which have been described who constitute a danger not contingent but actual. Special and immediate provision is required for their case."

* * * * * *

"It seems to us that the simplest device is to provide that in respect of acts committed before the Defence of India Act expires (or an earlier date if preferred) and danger apprehended by reason of such acts in the future it should be lawful to proceed against any person under any of the provisions which we have outlined without any notification. In other words, the new law is to be deemed to be operative for that purpose immediately."

W. H. VINCENT.

DELHI;
The 11th January, 1919.

60

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

ANNEXURE

TO

Bill to make provision in special circumstances to supplement the ordinary criminal law, and for the exercise of emergency powers by Government.

[*Statement of Objects and Reasons.*]

SGPI, Delhi—73 LD—18-1-19—700.

No. 165, dated the 16th January, 1919. Pro. No. 60

From—The Secretary to the Government of India, Legislative Department,

To—
- The Secretary to the Government of Madras, Legislative Department.
- The Secretary to the Government of Bombay, Legal Department.
- The Secretary to the Government of Bengal, Legislative Department and Secretary to the Bengal Legislative Council.
- The Chief Secretary to the Government of Bihar and Orissa.
- The Chief Secretary to the Government of the United Provinces.
- The Chief Secretary to the Government of the Punjab.
- The Secretary to the Government of Burma, Legislative Department.
- The Hon'ble the Chief Commissioner, Central Provinces.
- The Hon'ble the Chief Commissioner, Assam.
- The Hon'ble the Chief Commissioner and Agent to the Governor-General in the North-West Frontier Province.
- The Chief Commissioner, Coorg.

I AM directed to forward herewith copies of the papers noted on the * * * * margin* and to request that the Bill and Statement may be published in the Fort St. / Bombay / Calcutta / Bihar and / United / Punjab / Burma / Central / Coorg / North-West / Assam George / Government / Orissa / Provinces / Government / Provinces / District / Frontier Province Gazette in English and that the dates of such publication may be communicated by telegram.

*(2) A Bill to make provision in special circumstances to supplement the ordinary criminal law, and for the exercise of emergency powers by Government with Statement of Objects and Reasons.

The Publisher of the *Gazette of India* at Delhi has been instructed to furnish the Publisher of the Fort St. George / Bombay Government / Calcutta / Bihar and Orissa / United Provinces / Punjab Government / Burma. / Central Provinces / Coorg District / North-West Frontier Province / Assam Gazette with English copies of the Bill and Statement (in Gazette form) for publication in the latter Gazette.

2. As it is proposed to proceed with this Bill during the ensuing session of the Imperial Legislative Council, I am to express the hope that it may be possible to publish the Bill at the latest by the end of January.

Office Memorandum No. 225, dated the 20th January, 1919. Pro. No. 61

From—The Secretary to the Government of India, Legislative Department,

To—The Home Department.

THE undersigned is directed to forward herewith a copy of the Bill noted in the margin, which was published in the *Gazette of India* of the 18th January, 1919, under Rule 23 of the Rules for the Conduct of the Legislative Business of the Council of the Governor General.

The Criminal Law (Emergency Powers) Bill.

2. A copy of the Statement of Objects and Reasons also accompanies.

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No. 13, dated Delhi, the 22nd January, 1919. Pro. No. 62

From—The Hon'ble MR. H. M. SMITH, Secretary to the Government of India, Legislative Department,

To—The Permanent Under-Secretary of State for India.

I AM directed to forward herewith a copy of the Bill noted on the margin which was published in the *Gazette of India* of the 18th January, 1919, under Rule 23 of the Rules for the Conduct of Legislative Business of the Council of the Governor General.

The Criminal Law (Emergency Powers) Bill.

2. A copy of the Statement of Objects and Reasons and of Notification in the Legislative Department No. 14, dated 16th January, 1919, also accompany.

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Extract from the Proceedings of the Indian Legislative Council assembled under the provisions of the Government of India Act, 1915. (5 & 6 Geo. V, Ch. 61.)

Prono:

The Council met at the Council Chamber, Imperial Secretariat, Delhi, on Thursday, the 6th February, 1919.

* * * * *

CRIMINAL LAW (EMERGENCY POWERS) BILL.

The Hon'ble Sir William Vincent:—"My Lord, may I ask your Excellency's permission to take up item No. 5 on the List of Business before item No. 2, as Item No. 5 deals with the more important of the two Bills?" 12-19 P.M.

His Excellency the President:—"Certainly."

The Hon'ble Sir William Vincent:—"My Lord, my task in explaining the reasons for introducing this Bill has been considerably lightened by the discussion on the Resolution brought by the Hon'ble Mr. Khaparde last Session and I will endeavour to avoid repeating to-day what I then said. At the same time it will be my duty to place before the Council salient facts connected with this measure.

"As the Council are aware for some time before the war the Government of India were faced with the difficulty of dealing with a number of revolutionary conspiracies or rather with one revolutionary conspiracy of which there were several sub-divisions. The intention of these conspiracies was by dacoity, murder and other crimes of violence to promote a rising against the British Government and to render the administration of this country impossible. Owing to lack of any effective measures for dealing with this conspiracy, the movement gained considerable strength, and either before the war or shortly after the inception of the war, the difficulty of the situation was complicated because it received material assistance from the King's enemies. It attained indeed such serious proportions that it was really subversive of all good government in parts of this country.

"It was impossible to cope with this movement under the normal law, and if Hon'ble Members will read the Report of the Rowlatt Committee, upon which the present legislation is based, they will find confirmation of this not only in the findings of the authors of the Report, but also in the figures which they cite. It will be seen that from 1906 up to the date of the Report there were no less than 311 offences and attempts at offences connected with this revolutionary movement, in which 1,038 persons were known to be implicated. Out of that number, 64 only were convicted. In 1915, the Defence of India Act was passed, mainly in connection with certain violent outbreaks of crime in the Punjab. It was not, however, used to any great extent in Bengal though it may have been used to a small extent there. The result was that the revolutionary movement gained further strength, and in 1915 and 1916 there were 64 outrages including 14 murders, 8 of the murdered people being policemen. The Act was then enforced. I think that the specific reason for enforcing it was particularly the murder of Deputy Superintendent Basanta Chatterji. I am not positive on the point as I speak from memory. The result was that the outrages were at once reduced and from January 1917 to February 1918, I believe the total number was 10. I think I am right in saying also that during the last quarter of 1918 there were no revolutionary outrages at all. The obvious conclusion from this is that the measures taken by the Bengal Government (I am citing the Bengal Government because the movement was particularly prevalent there and illustrates the position) have been effective.

The Council will see indeed that the Bengal Government has been singularly successful in dealing in this way with revolutionary crime; the success of these efforts may also further be gauged from letters which revolutionaries have themselves written. Here is one:—

'Armed rising was imminent in other provinces. We could not lag behind. Government got the scent and was on the alert. Some of our best men were lost. Unfortunately at last we had to drop the idea of an immediate rising. The local organisations are still intact and can be developed if required.'

"In another letter which I have here, one of these revolutionaries says:—

'The condition here beggars all description. Trusted friends can no longer be trusted with secrets. No one wants to see us. The guardians hate us more than the enemies. (I am not surprised at that.) The students are anxious to avoid us. Those who were eager to talk to us now avoid us.'

"I cite these letters and figures to show that the movement was effectively scotched by the Government under the powers conferred on it by the Defence of India Act. I am glad also to say that the Bengal Government have at once taken advantage of the situation to release a very large number of men whom they had under restriction. A recent report of a debate in the Bengal Council indicates that out of 1,062 detenues 677 have already been released on guarantee. Of the rest, 385 are subject to restrictions of domicile only, 125 being domiciled in their own homes.

"Well, my Lord, during the progress of these operations, the Rowlatt Report, as it is commonly called, was published. In it certain recommendations were made for legislation to enable the Government of India effectively to cope with the disorder. The position as it appeared to the Government of India was this. We had been unable effectively to cope with this movement under the normal law. We had been foiled in all our efforts. We then took restrictive measures, and we have been, or really the Local Government has been, singularly successful in dealing with it. I think if you read the Report the vital propositions are that under pre-war conditions the machinery of law and order was unfitted to cope with lawlessness of a particular type; that the coming of the war with its emergency legislation really saved the peace of India by providing machinery which could deal with this lawlessness; and that it is unsafe for us now to revert to the previous condition of affairs, in which these anarchical forces were allowed unrestricted license to prosecute their designs. It is on the basis of this Report that we have undertaken this legislation. But before I explain exactly what the details of the Bill are, I think I ought to make one point quite clear, and that is, that this Bill is in no sense aimed at political movements properly so called. It is definitely and distinctly intended and framed to cope with seditious crime, and it differs very materially also in its scope from the Defence of India Act. It is not, if I may say so, nearly as wide as that Act; and, so far as I am able to interpret it, it cannot be used against any activities other than seditious activities, even though they may endanger or tend to endanger the public safety. I think it is necessary to emphasise this fact, because there seems to be in some quarters a misapprehension on the point.

"The Bill itself is divided into five parts. The first part provides for the speedy trial of offences. It can only be used or brought into operation when the Governor-General in Council is satisfied that scheduled offences are prevalent in the whole or any part of British India, and that it is expedient to provide for their speedy trial. Put very shortly, the part enables such offences to be tried by a strong Court consisting of three High Court Judges expeditiously without commitment and with no right of appeal. The first part also makes provision for trials being held in case of need in the locality or near the locality where the offence was committed, and also for trials *in camera*. Another point of importance in this part of the Bill is contained in clause 17, which allows the statements of persons not examined as witnesses to be used in evidence in certain circumstances. We know that witnesses have, after their statements have been recorded, been murdered and we seek to remove at least the temptation to murder these witnesses and to preserve their testimony. Another point of great importance in this part of the Bill is that we now propose to allow accused persons to give evidence on their own behalf. They are not forced to do so. They may do so or not as they like, so that those who are innocent may have full

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opportunity for clearing themselves. This last provision of the Bill is in accordance, I believe, exactly with the law which prevails in England.

"Part II of the Bill deals with preventive measures and with Part III is probably the part which will attract more attention. It can only be brought into operation if the Governor General in Council is satisfied that movements which are in his opinion likely to lead to the commission of offences against the State are being extensively promoted. Now if the Members of this Council will look at the Report itself, they will see that it is admitted that punitive measures alone can be of little effect in the repression of this sedition; and it is for that reason that they have recommended these preventive measures. The powers of the Local Government where this part is brought into operation can be exercised only in respect of persons reasonably believed to be or to have been actively concerned in such area in any movement of the nature referred to in section 20, that is, a movement likely to lead to the commission of offences against the State. In such cases the Local Government may either order the person so concerned to furnish security or to notify his residence, or to reside in a particular area or to abstain from any act specified or finally to report himself to the police. In order to ensure that the powers of Government are not exercised without reason, the Bill provides for a safeguard in the constitution of an investigating authority which is to examine the material upon which orders against any person are framed. This investigating authority is to include one judicial officer and one non-official Indian. Further, in order that the interests of any person subjected to an order may be adequately protected, the Bill provides for the constitution of Visiting Committees to see to the welfare of such persons.

"Part III is more drastic. It can, however, only come into operation when the Governor General in Council is satisfied that scheduled offences have been or are being committed to such an extent as to endanger the public safety. In such circumstances, the Local Government, where there is reasonable ground for believing that a person has been concerned in a scheduled offence, may direct the arrest of such person, his confinement in such place and under such conditions as may be prescribed. There are again the same safeguards as under Part II for an investigating authority and for a Visiting Committee. The period of orders under Parts II and III I ought to have explained is limited to one year in the first instance and to three years in all.

"Part IV applies the provisions of Part III automatically to persons known to have been concerned in revolutionary crime at present and who are under restriction under the Defence of India Act by reason of that connection.

"I do not think that at present there is anything in Part V to which I need draw attention. It is mainly ancillary and is a matter in great measure, I think, for Select Committee. But if there is any point on which Hon'ble Members seek for information I will do my best to furnish it.

"Well, my Lord, I have now explained the provisions of this Bill, and it remains for me to say that the Government have not undertaken this legislation lightly or without anxious consideration. We have no desire to restrict the liberty of persons further than a compelling sense of duty forces us to do. At the same time we are responsible for the public peace in this country, and it is our duty to take such measures as may be necessary to secure that. No other remedy has been suggested in regard to this form of crime as yet for attaining that object. If, however, any effective remedy is proposed the Government of India will be only too glad to consider it. There seems, however, to me to be some misunderstanding as to the nature of the disruptive forces of this anarchism. There are those apparently who look upon these men as innocent patriots, guilty of nothing save an excess of possibly mistaken zeal. My Lord, I ask the Council to get rid of this delusion. These men are not patriots; they are really enemies of civilisation, they are enemies of progress and enemies of any form of organised government, whether European or Indian. It may be suggested, as it has been suggested before, that all their activities will be reduced by the introduction of the Reforms Scheme. My Lord, I should like to say that these men are as much opposed to the Reform Scheme as to anything else. During Mr. Montagu's visit last year, I myself saw a circular which was addressed to

a prominent citizen in Calcutta where it was openly stated that these men were not concerned with Mr. Montagu's coming or going, and that their object was first and last to spread terror and make the Government impossible. My Lord, I think if these facts were more fully realised, we should hear less of that veiled sympathy with desperate men which really encourages them to further efforts and hinders the work of many who have the progress of this country at heart; and I suggest that it is the duty of all sober-minded men to combat this dangerous confusion of crime with patriotism, remembering what the effect of any such encouragement is. The Bill which I now seek to introduce is not aimed at patriots; it is aimed at criminals; it is not aimed at the suppression of politics at all; it is aimed rather at the purification of politics. What we seek to do is to prevent anarchy and disorder, and I think that many here will realise the importance at this juncture of combating these forces of disorder so rampant in many parts of the world when they consider the effect of anarchy both in Russia and in other countries. My Lord, if ever there was a time when it was necessary to check revolutionary and anarchical tendencies, I think it may be safely said that it is the present.

"My Lord, at the same time, if I may say so, I realise very acutely the difficulties in which Hon'ble Members in this Council are placed. I realise their reluctance to accept a repressive measure which is frankly a repressive law aimed at the suppression of a revolutionary movement. I realise their regret that any such measure should be necessary and their constitutional dislike of any legislation which interferes with the liberty of the subject. Government is exactly in a similar position. We also recognize the constitutional objections to these interferences with liberty, but we realise the danger which has to be combated, and for that reason we are forced, though with the greatest reluctance and only after anxious consideration, to introduce this present Bill. We ask the Members of this Council to face the facts in this matter courageously and honestly.

"If the findings of the Rowlatt Committee are accepted, and I submit that they must be accepted by every reasonable man, there is no getting out of that, that is to say the facts apart from the recommendations, then is it not essential that Government should be vested with some reasonable machinery to deal with this evil? And is it not the duty of the Members of this Council to assist Government in this matter? I ask the Council very earnestly to realise their own responsibility in this matter. There are many here who claim responsible government for the country, some sooner some later; are they willing to accept the responsibility which responsible government inevitably connotes; are they willing to face the hostile criticism which must frequently be expected when action is taken in the public interest? My Lord, there are many who are watching the conduct of this Council on this occasion with great interest; it will be regarded by many as a test of capacity—whether the Members of the Council have the courage to do what is right in assisting the Government in its first duty, the maintenance of the public tranquillity. Will the Members be found wanting, and give a right to anyone to say that their attitude on this question indicates their unfitness for responsible government? I earnestly hope that no such occasion and no such material will be furnished to those who are opposed to political progress in this country.

"My Lord, with these words I commend the Bill to the Council. The details, if the motion is carried, will be considered in Select Committee, and the Government is perfectly open to consider such modifications as will not render the machinery ineffective for dealing with the evil which they seek to combat.

"I now introduce the Bill and move that it be referred to a Select Committee consisting of the Hon'ble Sir George Lowndes, the Hon'ble Pandit M. M. Malaviya, the Hon'ble Mr. Shafi, the Hon'ble Mr. Muddiman, the Hon'ble Mr. Sastri, the Hon'ble Nawab Saiyad Nawab Ali Chaudhuri, the Hon'ble Mr. Kincaid, the Hon'ble Mr. Khaparde, the Hon'ble Mr. Banerjea, the Hon'ble Mr. Fagan, the Hon'ble Mr. Patel, the Hon'ble Sir Verney Lovett, the Hon'ble Sir James DuBoulay, the Hon'ble Mr. Emerson and myself, with instructions to report on or before the 6th March, 1919."

The Hon'ble Mr. V. J. Patel:—"Your Excellency, I beg to move 12-34 P.M.

'That the consideration of this Bill be deferred till six months have elapsed after the expiry of the term of office of this Legislative Council.'

"In moving this amendment, I must say at the outset that no sensible Indian could be charged with having any the slightest sympathy with anarchists or anarchism. We are all interested, my Lord, in putting down anarchists or anarchism, and as a matter of fact, the interests of the Government and of the people are identical in this respect. The difference however is in the methods, in the ways and means as to how to put down these anarchists and anarchism. In every country, my Lord, revolutionary crime is really the outcome of what I may call political and administrative stagnation; if the political advancement of a country is really very slow and does not keep pace with the times, this sort of crime is bound to raise its head and disturb the peace of the country. What is then the remedy? The remedy, I submit, does not lie in repressive measures, but I am strongly of opinion that the remedy lies in the removal of the standing grievances which bring revolutionary crime into existence. We are all very glad that the Reforms are coming. The very publication of them has a good deal to do with the creation of a smooth atmosphere to some extent, and I am absolutely certain, my Lord, that when these reforms actually do come, particularly with the modifications suggested by the leaders of public opinion—I mean the main modifications—I have not the slightest doubt in my mind that revolutionary crime will almost disappear. It is said by the Hon'ble Sir William Vincent that anarchists are opposed to reforms, they will have nothing to do with Mr. Montagu or the Viceroy or their Reforms Report; that what they want to do is to terrorise the Government and make it impossible. Well, I assume that that is so. But I say that for revolutionary crime to advance a sort of general discontent—I should say an atmosphere of general discontent—is absolutely necessary. But let me assure your Excellency and this Council that as soon as the Reforms are granted, why their very publication has done a great deal, as soon as they are introduced, the general atmosphere of discontent will give place to an atmosphere of contentment, with the result that revolutionary crime will tend to disappear. That is the answer which I give to my Hon'ble friend Sir William Vincent's argument that anarchists do not and will not care for reforms. The amendment which I have proposed before this Council is that the consideration of this Bill should be postponed for some time. At present, as I have already pointed out, circumstances have entirely changed; even the Rowlatt Committee which made the Report did not contemplate that their recommendations should be put into effect in all and under any circumstances. As a matter of fact, in their recommendations regarding legislation to deal with the difficulties that might arise in dealing with the conspiracies, the Committee say:—

'This as expressed appears to us to be applicable to the state of circumstances under which the difficulties referred to were encountered. These difficulties have, however, been circumvented for the time being by special temporary legislation and they have not been in operation at the time of our inquiry. When this legislation lapses circumstances may have altered and the position may be better or worse. We do not think it is for us to speculate nicely on these matters. We must of course keep in view that the present war will have come to an end, but we cannot say with what result or with what ulterior consequential effects or possibilities of consequential effects upon the situation.'

So the Rowlatt Committee itself did not contemplate that their recommendations should be put into effect under any circumstances. As a matter of fact, the circumstances have altered. Revolutionary crime had ceased to exist at the time when they made their report, and since then cessation has continued. Then, again, after the Rowlatt Report, the Reforms Report has been published, the functions and the Franchise Committees have met in India; they will shortly, as your Excellency pointed out in your opening speech, submit their Report to Parliament, and a Bill of Reforms will also be passed into law. That being so, I personally think that the passage of this measure at this juncture will materially affect the reception of the reforms in India.

"My Lord, I cannot disguise the fact that the whole country from one end to the other is entirely opposed to this measure, and I am absolutely certain, and I shall be very sorry to see it, that the passage of this Bill will stir up, in fact

the introduction of it has already stirred up, a tremendous and unprecedented agitation in the country at a time when great changes are in sight. Surely Government intends that the reforms should be given a fair trial, and I am afraid that intention of Government will not be fulfilled if at this juncture this measure is passed. I must say that I am not at all surprised that the Government have thought it proper to introduce this measure at this juncture. It is one of those blunders which a Government not responsible to the people is likely to commit in moments of excitement. What I am, however, surprised at really is that a Bill of this kind should have been brought forward at a time when people really expected the introduction and discussion in this Council of measures which would bring them more liberty, more contentment, measures which really would conduce to the greater well-being of the people in matters political, in matters social, and in matters industrial. At a time like this when the war has ended triumphantly for us, at a time when the Peace Conference is sitting to devise measures for the peace of the world, at a time when we are within sight of great constitutional reforms in India, at a time when one of the Indians is made a Member of the British Cabinet, at such a time instead of bringing forward measures which would really conduce to the well-being of Indians, a measure of this character should have been brought forward. That is a matter which surprises me. I do not at all wish to go into the merits of the measure at the present moment. I say, to say the least of these measures, they are inopportune and they should not have been brought forward at this juncture. There is almost a quietus in the country, and a tremendous agitation such as I fear to contemplate, is looming. I pray and trust this Council will consider the consequences that will result out of the passage of this Bill.

"I may be asked why I want the postponement of the consideration of this measure for the period named in the amendment. My idea is that a measure of this kind should be discussed, if at all, by the Council which would come into existence under the Reforms Scheme. I do not mean to say that this Council is in any way incompetent to deal with this question or will not do justice to it, but I do maintain that so far as this Council is concerned, its very existence is entirely at the mercy of the Executive. You can extend its life or, if you like, you can terminate it. As your Excellency said in your opening speech, by an executive order without even consulting this Council, our existence has been recently extended till the 20th of July, 1920. So in this country the Executive is all powerful, and the Council is so impotent even as regards the question of its existence. In these circumstances, and particularly if the reforms are to be given a fair trial and they are to be well received in this country, I think it is absolutely necessary, particularly when crime is at a standstill, that Government should not press this motion of reference to a Select Committee at this stage, but wait till the new Councils come into existence. As I said, I do not wish to go into the merits of the Bill. It would be sufficient for my purposes to say that we are mightily afraid of it, and we think that all our constitutional agitation for any reforms whatsoever will die if these Bills are passed into law."

12-52 P.M. **The Hon'ble Mr. Surendra Nath Banerjea:**—"My Lord, I have given notice of an amendment on somewhat similar lines to those of my friend's amendment, and with your Lordship's permission, I may be allowed to make my observations at this stage of the discussion. My Lord, I confess to a sense of regret and disappointment that a Bill of this kind should have been introduced at this moment. I complain of its inopportuneness; I complain of the principles which underlie some of its provisions, and, my Lord, in saying this, I do not express my own personal views, but the considered opinions of those of my friends with whom I am accustomed to act in public life. My Lord, the leaders of the great party to which I belong (a growing and an increasingly influential party) have given this matter their careful consideration, and I am here to lay before this Council our deliberate and matured judgment upon these two Bills. My Lord, it is no use disguising the fact that the Bill has created widespread anxiety, and even alarm, in the public mind of India, and I must say there is abundant justification for this feeling. It is feared that if this Bill be passed, it will cripple our political activities and bring about

the stagnation of our public life. My Hon'ble friend has read out some of the provisions of the Bill and as I was listening to them, it struck me that they contained matter which constitutes a peril to the sacred rights of personal liberty which Englishmen value so much; which I am confident this Council cherish dearly; which you, our masters in the great art of constitutional government, have taught the people of India to prize. My Lord, one of the provisions—I think it is section 21—which my friend read out, says that in a notified area the Local Government may declare, after an inquiry, executive in its character and complexion, that a person should abstain from any act. If this provision means anything (I am not a lawyer but a common-sense man accustomed to interpret provisions of the law in my own blunt common-sense fashion), if this means anything, it means that after this executive inquiry, a journalist may be prohibited from following his avocation, that a public man may not be allowed to address public meetings. My Lord, I consider this as a grave menace to public liberty, a serious encroachment upon the rights which have been guaranteed to us and which we prize. If a right of this kind were taken away by a duly constituted court of law, no one would have the slightest objection, but to place such dangerous, illimitable powers in the hands of executive authority, deliberating in secret, discussing in secret, deciding in secret, seems to me to be an infraction of personal rights which I almost shudder to contemplate. My Lord, in making these observations, I desire to guard myself against any misapprehension which they may give rise to. We are as anxious as the Government could possibly be for the maintenance of law and order and for the eradication of anarchical and revolutionary crimes. My Lord, they are pregnant with mischief, they can do us no good; we have witnessed in other countries the horrors which have followed in their train. We have no desire that there should be a repetition of these horrors in our dearly-beloved motherland. We abhor revolution from the bottom of our heart; we are the friends of evolution, and if I could be convinced that this law was necessary, this drastic law was required, I should certainly accept the challenge which was thrown down by my Hon'ble friend the Home Member and support his Bill. But I hope to be able to show in the course of the arguments which I am about to address your Lordship, that there is another way of getting out of the difficulty in which we are at the present moment. I am free to confess that there is, I will not say a party, but a fringe of our population, who support revolutionary ideas, but, my Lord, they are to be counted by hundreds. They are a handful as compared to the myriad millions of our vast population, and are the sins of the few to be visited upon the heads of the countless millions of the people of India? My Lord, my friend the Hon'ble Home Member has admitted that the forces of revolution are now dormant, the Government has got them well under control. Those reports of murders and lootings which we were accustomed to hear are now steadily receding into the dim mist of past history. You have, my Lord, in your armoury a weapon, offensive and defensive, which is amply sufficient for all purposes. The Defence of India Act is there, and it is now in force and will be in force until six months after the conclusion of peace. The Peace Conference has just started its sittings. The peace negotiations are going on from day to day. I take it, my Lord, that on a moderate computation, these negotiations must last at least for three or four months. That brings us down to the month of June.

"The Defence of India Act will be operative six months after the conclusion of peace. That will take us down to the end of the year. Therefore, at least up to the 31st of December, 1919, no such law as the one that you are now proposing to enact is needed. Then, my Lord, there is the power of Ordinances which you have used so freely and so frequently and to such good purpose. You can revive the Defence of India Act by an Ordinance which will continue it till June, 1920. Therefore, my Lord, having regard to the powers with which you are armed, having regard to the powers which the Government of India at present possess, and which can be easily continued, it seems to me that no case has been made out for enacting a law of this kind, at any rate at this stage.

"Nor is this all. You have got in your armoury Regulation III of 1818. It is a part of the permanent law of the land, and you can set it in

motion at any time you like. As a matter of fact, I think my Hon'ble friend the Home Member will bear me out when I say that the most dangerous characters have all been interned under Regulation III of 1818.

"Therefore, my Lord, I submit with all deference but with the utmost emphasis that no case has been made out for the enactment of this law at this stage. On the contrary, it seems to me that there are very weighty reasons why you should not proceed with this legislation. By the time that the Defence of India Act expires—by the efflux of time, I will take it on the 31st December, 1919, or the 30th of June, 1920—by that time the Reform proposals will have been introduced in Parliament, and I am sure, I feel confident, that they will be embodied in the law of the land. And, my Lord, let us contemplate the situation as it will then be developed. A new atmosphere will have been created surcharged with the spirit of mutual esteem, of mutual confidence, of mutual co-operation between the rulers and the ruled. A new order of things will have been inaugurated, an order of things, I take it, more favourable than what now prevails for the consideration of a contentious measure like this. I ask, therefore, is it necessary, is it wise, to go on with this measure? My Lord, Burke has observed in one of those illuminating passages which abound in his immortal works that in the great task of government conciliation must precede coercion, and that when conciliation fails, then, and then only, must coercion be resorted to. My Lord, I regret to have to say that the Government of India have reversed this order of things. Repression first, conciliation next. In the first place, you place before us this Bill and ask us to pass it into law, and then come the great constitutional reforms. My Lord, furthermore, if there is one truth which should be burnt in upon the souls of the rulers of men it is this, that no measure, be it administrative or legal, can be successfully worked except with the willing concurrence and co-operation of the people. If a measure alienates popular sympathies, sets up the people in arms against you, gives rise to the fiercest agitation, it is doomed, foredoomed to failure. I very much fear that that is the case with the present Bill. The agitation has already commenced; it is growing, and it will grow, day by day. My Lord, I cannot help thinking that by passing these two Bills, or this one Bill, you will be placing a very formidable weapon in the hands of the revolutionaries whom you desire to suppress and in the hands of the reactionaries in England who desire to wreck the reforms. This measure will foster excitement, uneasiness and public discontent, and these are the impulses upon which the revolutionary instinct feeds and from which it derives its sustaining and vitalising influence. The revolutionary will say in his secret leaflets, which he circulates with strenuous persistency, 'All this talk about the Reform proposals is moonshine. It means nothing; it implies nothing. Here you have got this drastic Act symptomatic of the spirit of the administration.' All this may be grotesque, wild exaggeration, but, my Lord, in a state of popular excitement it is bound to appeal to the popular sentiment. And then what will Lord Sydenham and his followers say? Referring to this Act, they will say 'Here the Government of India by the enactment of this law tells you that India is seething with discontent and sedition, and that it is necessary to pass a law of this kind for the purpose of grappling with the situation. Tranquillise India first, and then it will be time enough to talk of Reform proposals. Look at Ireland. What has happened there? Irish discontent, the disturbed condition of Ireland, have indefinitely postponed the prospects of Home Rule.' 'Apply the same principle', Lord Sydenham and his followers will say, 'to India'. What then, my Lord, becomes of our Reform proposals? Your Excellency's Government and the authorities at home have staked their credit and reputation upon the passage of the Reforms Bill through Parliament without any attenuation, without any whittling down. The passage of that Bill will be seriously handicapped by the Bill which the Hon'ble the Home Member desires to enact.

"My Lord, I need not detain the Council any longer. I appeal to your Excellency's Government to reconsider the whole situation and to drop the Bill, or at any rate to postpone it until the Reform proposals have become the law of the land. My Lord, the agitation against the Bill has already commenced. We are receiving telegrams every hour Last night, I was awakened at midnight by a peon with a telegram purporting to be the proceedings of a

public meeting protesting against the Bill. I am sure my friends over here are being troubled in the same way every hour of their lives. The agitation has commenced; it will grow. My Lord, we want—certainly an old man like myself wants—peace, freedom from agitation, from conflict and controversy. I therefore appeal to your Excellency's Government with all the emphasis that I can command to save us from being precipitated into the vortex of an agitation which is bound to excite the fiercest passions, which will be a source of embarrassment to your Excellency's Government and will dissipate that atmosphere of peacefulness, of tranquillity, of mutual trust and mutual confidence, which the Reform proposals have helped to create, and which we of the moderate party have tried to deepen, to extend and to promote. I do trust, therefore, that my appeal will evoke a sympathetic response in the heart of my Hon'ble friend the Home Member."

The Council adjourned for lunch till 2-15 P.M.

The Hon'ble Mr. Kamini Kumar Chanda:—"May I inquire the dates of the letters which the Hon'ble the Home Member referred to in his speech?" 2-15 P.M.

The Hon'ble Sir William Vincent:—"I am afraid I cannot give the Hon'ble Member the information he requires."

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I whole-heartedly associate myself with the remarks of my Hon'ble friend Mr. Patel and the Hon'ble Mr. Banerjea. I feel, my Lord, that I will be failing in my duty to your Excellency's Government, that I shall not be mindful of the best interests of my country or the dictates of my own conscience if I do not enter a most emphatic and earnest protest against this Bill. My Lord, this Bill admittedly aims at curtailing the liberty of the subject—the right of speech and action, and some of the provisions have certainly no precedent in the jurisprudence of any other civilised country. It is my bounden duty to bring to your Excellency's notice that the introduction of this Bill has given rise to a widespread belief among the people of this country that they are going to get this as the first instalment of reforms. Surely, the Government cannot be ignorant of the amount of strong feeling that has been evoked in the country on the subject of this Bill. There have been public meetings at almost every important centre—I have read newspaper accounts of some of the meetings, and since our arrival in Delhi, as the Hon'ble Mr. Banerjea has told us, we have been receiving telegrams almost hourly from almost every place urging us strongly to oppose this Bill. The other day there was a public meeting in the Calcutta Town Hall just a few hours before I left by the Punjab Mail, and it was such a large assembly that the big hall could not hold all the people and an overflow meeting had to be held outside the hall. So far I do not think I have come across anybody whose opinion is worth having who does not seem to feel alarmed that if this Bill is passed into law, untold misery will be brought on this land. My Lord, last Saturday I had the pleasure of meeting a gentleman in the Senate House in Calcutta, a gentleman who is universally esteemed for his deep learning, his unblemished character and the sobriety of his views, a gentleman who never mixes in politics, and this is what he told me: 'What will all these reforms of His Excellency the Viceroy and the Right Hon'ble Mr. Montagu be worth if this law is passed? Better try to save the country from this law rather than have these reforms.' Now I submit, my Lord, that that is a typical case. We all know that at the present time the 'Bengalee,' which is edited by the Hon'ble Mr. Banerjea, and the 'Leader' of Allahabad, admittedly two of the most influential moderate newspapers, differ from the 'Amrita Bazaar Patrika,' 'New India,' the 'Hindu' and the 'Bombay Chronicle' very widely as regards Constitutional Reforms. But what is their attitude towards this Bill? Both sets of papers write in absolutely the same strain, and it is difficult to say which of them condemn this Bill more strongly—the 'Bengalee' and the 'Leader' or the 'Amrita Bazaar Patrika' and the 'Hindu.' Last Sunday the 'Bengalee' published the considered opinion in a signed article of Raja Kishorilal Goswami, the first Indian member of the Bengal Executive Council—a gentleman whose views, I believe, are held in respect by Government, a gentleman who, if anything, errs on the side of ultra caution; and he strongly urges the Government not to proceed with this

measure. My Lord, I do not think there can be any manner of doubt that persons of all shades of opinion are absolutely at one as regards this Bill. There may be one or two solitary exceptions, but even they have not come forward to offer any thing in support of this Bill. It is obvious, my Lord, that whatever other results may follow if this Bill is proceeded with, Government will lose the goodwill and support of the people and communities whose support is at all times a most valuable asset. My Lord, there seems to be a class of critics, English gentlemen, both official and non-official, who persist in misunderstanding the attitude of our leaders and politicians in regard to this matter. While coming up here I read an article in the 'Englishman' of the 4th instant which seems to be typical of this view. This is what it says:—

'In spite of the established fact that a large number of policemen, chiefly Indian, have been fatally shot or bombed, in spite of numerous dacoities in which Indians were killed and Indians robbed, in spite of many evidences of political crime, the average Indian politician and his mouthpiece, the indigenous press, have shown only sympathy for those who have, in order to prevent further political murders and dacoities, been interned in one fashion or another. Indian politicians and newspapers have never attempted really to defend their attitude. All the excuse they had to offer was embodied in the suggestion that the gangs who have been held in restriction for the good of the country were not guilty of the crime.'

"My Lord, that is not true. It is a libel on Indian politicians who are not in sympathy with these criminals. It is Indians themselves, as this article says truly, who are killed, Indians who are victimised, and Indian politicians would be demented, would be lunatics, if they sympathised with these anarchists. My Lord, it is not the anarchists that they sympathise with, but the innocent victims of police oppression. It is assumed that the persons who are hauled up before the Magistrates are always the miscreants who are guilty of the crimes which are sought to be established against them. This is what is at the back of our minds when we oppose the measure. I will not waste the time of the Council by quoting a large number of cases, but I will quote one instance from the Report of the Sedition Committee, on the findings of which the Bill is based—the attempt on the life of Basanta Chatarji, Deputy Superintendent of Police. The case is known as the Musulmanpara bomb case and is referred to in paragraph 66.

The report says :—

'From information now available it appears to be clear that this was the work of the Dacca Samiti and that the bombs had been procured from Chandernagore.'

But what was the judgment of the High Court? A young lad, a student of the Presidency College, was sent up for trial before the special tribunal presided over by the Chief Justice and Justice Sir Asutosh Mukerji. Lord Sinha (then Sir Satyendra Sinha) who was Advocate-General conducted the case for the prosecution. His conduct of prosecutions was always marked by extreme fairness, and he was impressed with the innocence of the lad, and he himself called the respected Head of the Oxford Mission to prove an *alibi* for this young man who was acquitted in spite of the attempts of the Criminal Investigation Department to swear away his life. The judgment of the High Court stated that 'the attempt of the police to connect an innocent lad with a dastardly crime had failed.' The Chief Justice and Mr. Justice Mukerji made strong comments, and in fact suggested an inquiry into the police evidence; but up to now we have not heard that anything has been done. As I said, my Lord, I could quote other cases from this Report, but it would be tiring the patience of this Council. I shall therefore only refer to one more—the Sindhubala case in which two innocent respectable young ladies were subjected to all sorts of atrocities. They were kept in confinement for days and days. Has any notice been taken of the persons who were responsible for that? My Lord, if it is an offence and a crime to have sympathy with people like the Sindhubalas and the Musulmanpara case's accused, I must plead guilty. But that is what is really at the back of our minds when we oppose the Bill. My Lord, this Bill is admittedly based on the recommendations of the Sedition Committee. We all know that that Committee was presided over by an eminent Judge of the English High Court, and that with him was associated another eminent Judge, the Chief Justice of the Bombay High Court.

"We shall always speak of their findings and their recommendations with the utmost respect. But, my Lord, I cannot help saying that as I read some of their findings and recommendations I was reminded of an anecdote I read somewhere, probably in Serjeant Ballantyne's Reminiscences. A man was tried on a charge of stealing a horse; the case against him was very strong and everybody expected that he would be convicted. But his Counsel, a Serjeant-at-Law or Queen's Counsel, I forget which, made a strong appeal and the Jury returned a verdict of not guilty. Of course he had to be acquitted, because fortunately or unfortunately—I do not know which—our Criminal Procedure Code is not in force in England. The Judge after acquitting him addressed him 'Now that you are acquitted, there is no fear of your being put on your trial again. Will you tell me whether you did not steal the horse?' The man replied 'well, my Lord, I always thoughtthat I did it, until I heard the address of my Counsel, and now I begin to think that I did not do it.' This is my feeling, my Lord, after reading some of the findings and recommendations of this Committee. I think it will be not in order, at any rate it would be taking up the time of the Council unnecessarily, if I were to refer to the findings I had in my mind. I shall simply mention this fact that the circumstance that their decision is based upon expert evidence which was not sworn and which was not sifted by cross-examination is bound to detract somewhat from the value of their recommendations. Apart from that, it appears from the report (paragraph 176) 'that proposals for legislation for the period after the war were, however, drafted and had been under consideration when it was decided to appoint our Committee.' I submit, my Lord, that this must have tinged to a large extent their decisions in this matter.

"Before coming to this legislation four points have to be considered. The first is whether there is any need for this legislation; secondly, whether it is wise or expedient to introduce it at this moment; thirdly, the provisions of the Bill itself, and fourthly, whether this Council has the power to pass this legislation. My Lord, I will not dispute the findings of the Committee at this moment. I will accept their findings, that there was a revolutionary party and that there were criminal activities and anarchical movements, and that there were difficulties in dealing with them. Accepting all this, I submit, my Lord, no case is made out for this legislation. What is the present state of things? Is there any clear finding in the Report that the state of things which led to the passing of the Defence of India Act and the regulations thereunder is still in force, still in existence? Is there any clear finding that after that law lapses automatically there will be a recrudescence of crime which we will not be able to deal with unless we have this law? So far from that being the case the Committee say (paragraph 175).

'This as expressed appears to us to be applicable to the state of circumstances under which the difficulties referred to were encountered. These difficulties have, however, been circumvented for the time being by special temporary legislation and they have not been in operation at the time of our inquiry. When this legislation lapses, circumstances may have altered and the position may be better or worse. We do not think it is for us to speculate nicely on these matters.'

Is this a clear finding that after this legislation lapses the state of things in the country will be such as to require the special law? They simply say they do not know what it will be; they do not speculate. Is there clear ground for launching into this special legislation in anticipation of what may happen? Is there any instance, my Lord, of anticipatory repressive legislation like this in any country? You have heard the Hon'ble the Home Member say that it appears from evidence furnished by these criminals themselves that this movement is still in force. Unfortunately for me I could not get at the evidence and gather for myself whether it was important. May I point out that the presumption of the law is that evidence that is not produced, if produced, would be adverse to the prosecution? Well he admits in his statement that the Bengal Government have taken advantage of the improvement in the situation and let off more than one thousand of these persons who were detained. Is that not conclusive to show that the position has much improved in spite of the letters which the Hon'ble Member referred to? Furthermore

the *Bengalee* in its editorial column took the responsibility of making this statement last Sunday :—

'Men like Arabindo Ghosh and his brother Barin, enemies of British rule like Savarkar and men of his ilk, are coming forward to stand by *pax Britannica* and all that it stands for. There are a host of respectable men in the country who are prepared to stand security for a very large number of our deportees and internees and have, on more than one occasion, signified their intention to do so to the powers that be.'

In the Town Hall meeting that was held in Calcutta Mr. B. C. Chatterji, a well-known counsel practising at the High Court, openly stated that there were letters received from leading anarchists who are now in jail and in the Andamans, letters which were passed by the Censor, in which they expressed the same thing, namely, that they would stand by the Government. Mr. Chatterji also placed before the meeting an extract from an article in a Bengalee magazine called the *Prabartak* published from Chandernagore and which he attributed to Arabindo Ghosh wherein the writer took the same view, namely, that all ought to combine and co-operate with the Government, now that the reforms are going to be granted Ought not this to be taken into consideration, my Lord, before we think of passing this repressive measure? My Lord, is there any investigation about the root cause of this movement? This was not referred to the Sedition Committee, and they do not come to any finding upon the point. Unless the root cause is removed, can you possibly put down by mere repressive measures this movement? My suggestion is that it is clear from the evidence of these anarchists, which I read to the Council just now and which is referred to in the article in the *Bengalee*, that we might take note of these facts and see what effect the reforms would have before we launch into the repressive legislation which is now contemplated. It is a case of history repeating itself. My Lord, may I refer to what Lord Morley said in his 'Recollections' at the time of the proposal to appoint Lord Kitchener as Viceroy. He said :—

'The ground on which I object is that the impression made on India by sending the greatest soldier to follow the reforms would make them look a practical paradox.' (Page 333, Vol. II.)'

"Now, my Lord, you are going to give us reforms and side by side with them and in fact before them, you are going to give us this repressive law. Will that pave the ground for the reforms in this country? If this measure is passed it is bound to create considerable agitation. I read the other day that Mr. Asquith in his election campaign was questioned by a soldier in regard to Home Rule, and this is what he said: 'The best way to get rid of the Sinn Fein is to grant self-government to Ireland. This will make short work of Sinn Feiners'. Lord Morley said with regard to the Irish Crimes Act 'If I know anything in this world it is the record and working of Irish Coercion Act since 1881, and the Irish Crimes Act was the most egregious failure in the whole history of exceptional legislation', page 328. What is there to show that what failed there will succeed in this country? Given the same cause the same result will follow whether it is Ireland or Italy or Russia or India. My Lord, our humble submission is that before you pass this measure let us see what will be the effect of the reforms in India. Where is the danger? In the first place there is the Indian Defence Force Act and that will be in force for some time yet. Peace has not yet been signed and even after it is the law will be in force for six months more. Apart from that you have got the 'rusty sword of 1818,' namely, the Bengal Regulation III of 1818. If in spite of these measures you find there is an increase of crime which cannot be dealt with by the ordinary law, surely your Lordship can pass an emergency measure, an Ordinance or even an Act in a single sitting, as was passed in the time of Lord Lytton and in the case of the Press Act. The Government would then be in a much stronger position than they are now, as your Lordship's Council would be bound to give the measure their whole-hearted support. My Lord, it will be a great misfortune if the Government wishes to go on with this legislation. Then I doubt if the Council has got the power to pass this law. In paragraph 200 of the Rowlatt Committee's Report this is what is said: 'In making suggestions for legislation we have not considered at all whether it could be argued that such legislation is in any respect beyond the competence of the Governor General in Council. We

have no authority to lay down the law on any such point, and any provisional assumption as the basis of our proposals would only cause embarrassment. We have proceeded therefore on the basis that any suggestions of ours which it may be decided to adopt will be given effect to by some legislature competent for the purpose'. Reading between the lines is there any doubt that the Committee was sceptical about the competency of the Council? It comes to this, my Lord, that the eminent judges were not satisfied that you have the power. Couple this with the findings of the Joint Parliamentary Committee presided over by Lord Loreborn and there is room for the submission that the matter ought to be considered further. I do not refer to the provisions of the Bill as it is not necessary for my present purpose: admittedly it is a repressive law which has created grave alarms in the country. My Lord, I have nothing more to add. I trust your Lordship's Government will be pleased to take these facts into consideration and see whether you cannot get on without this legislation. If you find it necessary to pass an emergent law, you can do so at a moment's notice, and this Council will then be bound to give it their whole-hearted support. With these words I support my Hon'ble colleague Mr. Patel's motion."

The Hon'ble Mr. M. A. Jinnah:—"My Lord, in the first place I may say that I was very glad to hear from the Hon'ble the Home Member, I do not remember his words, but I think he gave expression to this feeling that the Government were introducing this measure with considerable reluctance. I fully expected that and a great deal more from the Hon'ble the Home Member who has been, at any rate for a number of years, in the judicial line and once sat on the Bench of the High Court of Calcutta. My Lord, to any man who believes in law and justice, these measures must seem abhorrent and shocking. The Hon'ble the Home Member said, 'we have got to do this; show us some other remedy and we shall consider it.' Now, before I deal with these Bills and the speech of the Hon'ble the Home Member, I shall place before the Council the grounds on which I am opposed to these Bills. My first ground is this, that it is against the fundamental principles of law and justice, namely, that no man should lose his liberty or be deprived of his liberty, without a judicial trial in accordance with the accepted rules of evidence and procedure. My second reason is, that this is a wrong remedy for the disease, namely, these revolutionary crimes, although I for one am prepared to accept as correct the findings of facts of the Rowlatt Committee that the crimes of the nature indicated have been committed. My third ground is that the powers which are going to be assumed by the executive, which means substitution of executive for judicial, such powers are likely to be abused, and in the past we have instances where such powers have been abused. My fourth ground is that there is no precedent or parallel that I know of in any other civilised country where you have laws of this character enacted. My fifth ground is that this is a most inopportune moment. At this moment I can tell you that high hopes have been raised among the people of this country because we are on the eve of great and momentous reforms being introduced. My sixth ground is that the proposed measures are of a permanent character and not temporary measures intended only to deal with an emergency of a temporary character. And the last ground why I oppose this measure is that, my Lord, I do not wish to state it by way of any threat or intimidation to Government, but I wish to state it because it is my duty to tell you that, if these measures are passed, you will create in this country from one end to the other a discontent and agitation, the like of which you have not witnessed, and it will have, believe me, a most disastrous effect upon the good relations that have existed between the Government and the people. 2-12 P.M

"Now, my Lord, it is not a matter in which you can put one, two or three lawyers on one side and three or four lawyers on the other side and argue this matter out. The question, my Lord, to my mind, is this. First, is it or is it not a fact that these are unheard of and novel measures? That is a fact which cannot and will not be denied. Your justification for coming here and asking this Council to give you sanction to pass them into law is this. The Hon'ble the Home Member will correct me if I have misunderstood him. We had these revolutionary movements and it was difficult for us to

cope with them at first, but as soon as the Defence of India Act was passed in 1915 (though the Government for the time being took those powers for the period of the war) you were able to utilise those powers for the purpose of dealing with revolutionary conspiracies and with more success. That being so, the Government is now so enamoured with these powers that it boldly asks the legislature to enact measures of this character permanently, which to my mind is subversive of all principles of jurisprudence. Now, my Lord, there is no doubt, I think, it is common sense that by these powers you can more effectively deal with conspiracies. Nobody will dispute that. But then you will ask me, why do you object to it; why don't you give us these powers? My answer is this, my Lord, that by these powers of an executive character you may be able to get hold of more real offenders but at the risk and at the cost of many other innocent men who will be persecuted and who will have no chance, no opportunity, of a proper trial. Now that is the fundamental difference between you and as far as I am concerned.. You say these powers can be effective, and so they can be. But what guarantee is there for the innocent? Then you will ask, don't you trust the executive? My answer is that I certainly cannot trust the executive, because I am a firm believer,—I do not care how many Rowlatt Committees will decide and recommend,—I am a firm believer that no man's liberty should be taken away for a single minute without a proper judicial inquiry. I say that by these executive powers you may be able to lay your finger on the real offenders, but in trying to get at the real offenders I venture to say, that you would clap many innocent people, and you will clap many innocent people who will be unable to resist the executive orders. Now that, to my mind, is the root of the whole question. And what is your answer to that? and I say, my Lord, remember you are responsible; remember, once you have passed this law in this Council, your Excellency's Government is responsible, because these laws will then be put into force; they will be put into force by Local Governments, they will be put into force by officials, they will be put into force in various ways by the police; you are giving this power, and I want you, my Lord, to consider whether such a case has been made out as to enact these measures. I am now dealing only with the preventive measures. The Rowlatt Committee themselves admit it, and they also feel embarrassed; they also recognise the fact that it will involve the infringement of liberty of the subject. Take, for instance, your first clause, the important clause in the Bill, section 21, which reads thus:—

'Where, in the opinion of the Local Government, there are reasonable grounds for believing that any person is or has been actively concerned in such area in any movement of the nature referred to in section 20, the Local Government may, by order in writing containing a declaration to that effect, give all or any of the following directions, namely, that such person—

(*a*) shall within such period as may be specified in the order execute a bond

(*b*) shall notify his residence and any change of residence . . . . ;

(*c*) shall remain or reside in any area in British India so specified;

(*d*) shall abstain from any act so specified which, in the opinion of the Local Government, is calculated to disturb the public peace or is prejudicial to the public safety; and

(*e*) shall report himself to the police at such periods as may be so specified.'

Then come the more drastic preventive measures, clause 3?, which says:—

'Where, in the opinion of the Local Government, there are reasonable grounds for believing that any person has been or is concerned in such area in any scheduled offence, the Local Government may make in respect of such person any order authorised by section 21, and may further by order in writing direct—

(*a*) the arrest of any such person without warrant;

(*b*) the confinement of any such person in such place and under such conditions and restrictions as it may specify; and

(*c*) the search of any place specified in the order which, in the opinion of the Local Government, has been, is being, or is about to be used by any such person for any purpose prejudicial to the public safety.'

I do not know what is the meaning of the word 'movement,' the word might mean anything. Well now, who will give the information to the Local Government that a person is concerned with a movement of the kind defined? Who will furnish the Local Government with materials upon which the Local

Government will make its order ? I venture to say, my Lord, it will be some police officer. Who else can it be, except somebody in the Criminal Investigation Department, or the police ? It is the police who will furnish the Local Government with information, *ex-parte* information, and upon that information, furnished by the police, the Local Government will say, 'well, here we have got this information, we will make the order', and the order is made and it is final. I am fully alive to the fact that my friend the Law Member was a little bit annoyed when I was speaking on the Rowlatt Committee Resolution of the Hon'ble Mr. Khaparde, and he pointed out to me that these orders are made subject to certain conditions. I can assure my Hon'ble friend that I was fully alive to the existence of those conditions. I would have dealt with them, but my Hon'ble friend forgets that when one is speaking on a Resolution he has only got 15 minutes of life and cannot go into every possible detail. And what are the conditions ? After the order is made, after the man's liberty is taken away, under the second and more drastic preventive measures which are enacted, you have an investigating authority. After the man is either in jail, or has been arrested and is detained somewhere, you have the investigating authority. And, my Lord, what is that investigating authority ? Here again I am fully alive to the fact that it is suggested that there will be one non-official member on that investigating authority. But what is that investigating authority ? It will have the same materials, though it may call for more materials, but the inquiry will be anything but a judicial inquiry. The person who is either under arrest or has been detained will not be there. He may be called by the investigating authority, he may be questioned, but he may not be there. The whole inquiry will be *in camera*, most probably behind the back of the person accused and the investigating authority is then to make a report. I ask you, my Lord, again what is the good of that report, is it worth anything ? I venture to say that the Hon'ble the Law Member, for whose fairness I have the utmost respect, if he were there and if 20 statements were placed before him, and if the accused were not called before him, and he was to investigate behind the back of the accused, without the assistance of any advocate or barrister, I venture to say, my Lord, that even he, with his great experience of the Courts, is likely to be misled. How are you really going to some to any decision ? You know that even in a court of law, where you have sometimes the ablest counsel on both sides, it is difficult to decide whether a person is really guilty or not, and we know that juries, men of common sense, men of business, have differed. We know that judges have differed. We know that a Court sometimes convicts a man of murder, and you go to a court of appeal and on the same evidence the man is acquitted. This is a very serious matter when you are dealing with the liberty of the subject. How can you expect this investigating authority, sitting *in camera*, behind the back of the person accused, to come to any really useful conclusion ? What happens then ? This investigating authority will make its report and the Government is not bound to accept that report. What is the good of it ? The Government will say 'we have considered it.' Now this is the condition ; this is the most valuable safeguard, the great condition precedent which is made so much of. The same thing will apply in the more drastic preventive measures. Therefore, my Lord, it is no use shirking the issue, it is no use hedging round the whole of this question. It is quite clear and it is obvious that this measure is of a most serious character. It is dangerous. It imperils the liberty of the subject and fundamental rights of a citizen and, my Lord, standing here as I do, I say that no man who loves fair play, who loves justice and who believes in the freedom and the liberty of the people can possibly give his consent to a measure of this character. You have got to make out a very very, strong case indeed, and then alone you can come to us and then I can assure the Hon'ble the Home Member that I will tell him 'yes, you have made out this case, I shall co-operate with you.' What is the case you have made out ? Because there are some revolutionary conspiracies ; because, as the Hon'ble Mr. Banerjea said, you have a small section, a few hundreds, or a few thousand if you like, who have taken to revolutionary methods, who have taken to anarchical methods, you come here and say that we are going to enact laws of this character, permanently placing them on the Statute-book, the result of which would be that no man's liberty will be

safe in this country. I shall even go so far as to say this, my Lord, that there will be an end to political life and freedom in this country. No man will be safe. Supposing, my Lord, in some province some offences are committed. The Government of India is appealed to and the Government of India says 'very well, some offences have been committed—and mark you I have not dealt with the offences here, but the Schedule of Offences includes grievous hurt, rioting, and all sorts of other offences. If to-morrow, for some reason or another, there happen to be three or four riots in the Bombay Presidency, mind you nothing to do with politics at all, the Government of India may be asked to apply this Act to Bombay and the Government of India might intervene and make it applicable to Bombay.....

The Hon'ble Sir William Vincent :—"Is the Hon'ble Member quite correct in his citation from the Schedule? Will he read it? He has omitted the sentence 'if, in the opinion of Government, such offence is connected with any movement endangering the safety of the State."

The Hon'ble Mr. M. A. Jinnah :—"I know that perfectly well but how is this to be ascertained? I know that the draftsman has put it in this way that provided they are connected with any offence against the State, but I say supposing you have offences of this kind. I will give you an instance. Supposing we have somebody who is dissatisfied with some individual official and happens to attack him and causes hurt....."

The Hon'ble Sir William Vincent :—"May I point out that section 323 is not in the Schedule at all; the offence of simple hurt is not included."

The Hon'ble Mr. M. A. Jinnah :—"I said 'grievous hurt'."

The Hon'ble Sir George Lowndes :—"No, the Hon'ble Member said 'hurt.'"

The Hon'ble Mr. M. A. Jinnah :—"I said 'grievous hurt' just now."

The Hon'ble Sir William Vincent :—"'Grievous hurt' is also not in the Schedule. Section 326 deals with grievous hurt caused by a deadly weapon."

The Hon'ble Mr. M. A. Jinnah :—"I always understood that grievous hurt is grievous hurt with any kind of weapon. Therefore, I say that you have got a Schedule of offences to which there is no limit. Of course I can go into the whole list and take up the time of the Council unnecessarily. But you will find you have got a regular list of offences. They are not offences really confined to offences against the State. Therefore, what do you find? You find that once you get this Act made applicable to any province, then in that province if there is a particular person who is not liked or who is supposed to be undesirable, by some official, I say that person is not safe. If he happens to incur the displeasure of a few high officials in that province, I say that man is not safe, and he has got no remedy. Apart from these details, I say, as I said before, that this is not a matter which you can argue out like two lawyers arguing out a case on one side or the other. As I said before, the question to my mind is this. What case have you made out for these powers to be given to the Government? The answer I give to the Hon'ble Member who appealed to me and said the Council must consider its responsibilities, the Council must realise its position, is this, that you have made out no case. The only case that you have made out is this, that by means of these extraordinary powers which happened to be placed in your hands owing to the war, perhaps you have been able to deal with this particular kind of crimes more efficiently than otherwise you would have done. Now that is no reason for placing these Statutes permanently on the Statute-book. I say you have ample powers as it is; use them by all means, because I do not wish for a single moment to be understood to say that I do not want you to deal with these crimes. Deal with them

ut you must also remember this. Are you going to deal with these crimes in o-operation with the people, or are you going to deal with these crimes independently and in spite of the people? You may say that we do not care what he non-official Members think. I venture to say, my Lord, that there is not a single non-official Member that is going to support these measures. There may be one or two exceptions, but, as far as I know, barring one or two exceptions, the rest of them are going to oppose these measures. Not only that. Although the non-official Members in this Council certainly represent a very important volume of public opinion, you have also got the public outside, and I venture to say that the whole of the country is opposed to these measures.

"Then you say of course 'we have got the official block; we have got the official majority; we are going to carry this.' Well of course you can carry it because you have got the official majority. But I ask you, my Lord, and I ask your Government, do you or do you not accept our assurance when we say that nobody condemns these crimes more strongly than we do; nobody is more ready and more anxious to stop them than we are; nobody is more anxious to co-operate with you than we are? Therefore, will you not listen to us? Does our opinion count for anything or does it not? Does the opinion of the overwhelming majority of the non-official Members in this Council count for anything or does it not? I know it counted when you wanted £45 million. Is it or is it not going to count to-day, and, if so, why not? That is the question I ask. My Lord, we have got this question to face. As the Hon'ble Mr. Banerjea has put it, this Act is not going to expire for six months after the peace is signed. You have got Regulation III in your hands. You have got the power of Ordinance; you can enact this very measure, if necessary. And if in the new Councils, when they are formed, if we find and our conviction is this that there will be no occasion; we may be wrong, I am not going to be very emphatic on that point, we may be wrong, but we feel, and, my Lord, I feel convinced that this announcement of the 20th August by His Majesty's Government followed up by the visit of the Secretary of State for India and the fact that your Lordship and the Secretary of State for India went all over the country to ascertain the public opinion on the question of constitutional reforms and the publication of your Report which I for one had never any hesitation in recognising as an advance, and I have said so not in this Council but outside had tremendous effect on the people. And whatever differences there may be between your Government and ourselves with regard to those proposals, if we eventually get those reforms in the substantial form that we expect—and on that point we mean, my Lord, to fight to the end, we will do all that lies in our power, we will do our best, we mean to go further than that Report—but, my Lord, after we have fought the fight, whatever may be the end of it, once these reforms are introduced, I can assure you, my Lord, that you have got men in this country who will then say this: 'We have fought a constitutional battle, we have done all we could in our power, but we have not succeeded to the fullest, but it is a real and substantial advance now these reforms are introduced, let us make the best of them.' And I hope that the Civil Service, on the other hand, will act in the same way. They may fight now, they may resist us now, they may think that they are going to be endangered and they may think that even these proposals go too far; but once the fight is over, I hope that you and we will work in co-operation and do our best to see that those reforms are made a success. At that time, I can assure you, my Lord, and I can assure the Government, if we find that there still exists these revolutionary conspiracies, and if we find in co-operation with your Government that measures of a drastic character are essential, I assure you that you will find men amongst my own countrymen who will stand side by side with you and will be ready to give their assent to laws however much they may dislike them. Even then I can assure you I shall be loath to give my consent, but I shall do so if it is necessary. Now, therefore, do you think that you will lose anything, do you think that anything serious is going to happen if you accede to this request of ours, namely, to postpone the introduction of the Bill? That is all that we ask. Do you think that you will gain more by carrying this measure by means of your official majority against the will of the people? I say it is against the will of the people throughout the country,—and mark my word, what I say is

true and will be proved to be true—against the will of the people. Are you going to do that? And I say your only justification for that would be if you can say this to me: 'The danger is so imminent—after all, we are here as a foreign Government and we have got to protect ourselves and we have got to maintain peace and order in this country—it does not matter whether you like the method or not, we are absolutely driven to this desperation, that against the will of the entire people, against responsible opinion in this country, we find we are in such great danger that unless we arm ourselves with these powers our Government is in peril.' Is that so? I venture to say No; it is not what is going to happen. You have got already more than ample powers with you, I assure you have got, I would not care to go so far as to say the entire community—there may be a small section on whom you cannot count—but almost the entire community at your back; because, believe me, we do not wish, and nobody wishes, that there should be anything but ordered progress in this country. What have you found? I cannot, my Lord, quote your Excellency's actual words in your speech to-day; but what has India shown during this War? The good sense of India, the loyalty of India—not loyalty in that stupid sense in which it is sometimes used, but free sincere co-operation—have been acknowledged. Has India failed during these last few years? Then, my Lord, what is the danger, what is the necessity, that calls for pressing on with this Bill at this moment? My Lord, I do not wish to take up the time of the Council unnecessarily. I say, first of all, as I said before, the Bill is really opposed to the fundamental principles of British justice; secondly, I say it is not opportune; thirdly, I say it will create a most disastrous effect on the public mind.

"Then, with regard to the details, the Hon'ble the Home Member said that in the Select Committee, if there are any suggestions made on matters of details, they will be considered; but the difference between us is not so much a difference as to details. The difference, as I have pointed out, is with regard to the principles,—the fundamental principles. If there were only a difference with regard to details, I have no doubt that the Select Committee would be able to solve it; and there are many matters of detail which might be suggested to the Select Committee. Take, for instance, the question about the statements of persons who are either spirited away or cannot be found and so on by the accused. You say these statements should be allowed as evidence. Well, personally I think that would be a most dangerous thing, and I will give you my reasons for it shortly. First of all, you will admit that this is going against the ordinary law of evidence—section 33—which lays down that you cannot have statements of this kind. But without the test laid down in section 33 you propose that these statements should be admitted in evidence if the person who made the statement has been spirited away by the accused. Now, how is this to be proved to begin with? If the police or those who are interested in putting in these statements without being tested, without being cross-examined upon—if they want to put in these statements, the simplest thing for them to do is to say, if the people who made the statements do not appear, that they have been spirited away. How is this to be investigated? And instead of the real investigation whether a man is guilty or not, you will ask the Court to investigate whether three or four persons who made statements have been in fact spirited away by the accused or not. In other words, you will have a trial within a trial. That is a most objectionable thing at any time, and in matters of this kind you will simply encourage a practice which might be abused. And therefore I say that in the first instance that provision should be taken out altogether. Then you have got many other matters of detail, but I do not want to weary this Council. I have no doubt the Select Committee—if the Bill goes to the Select Committee—will consider these matters.

"My Lord, therefore in conclusion I would again make an appeal to your Lordship's Government as a man, my Lord, who is a lover of the Constitution, as a man, my Lord, who is a lover of law and order, as a man who believes in discipline and authority, I would appeal to you to reconsider your position before you proceed with this Bill any further, and I hope that when the new Councils come into existence, there will be no occasion for the enactments of such subversive laws, but I can tell you this that if things do not improve, if things

do not change, if things get worse, believe me, you will get responsible men who will stand by you and who will stand by you as strongly as anyone can I still hope that the Government will consider this, and I say that your persistence with this Bill will be most disastrous."

The Hon'ble Pandit Madan Mohan Malaviya :—" My Lord, before I proceed to discuss the Bill, may I, under rule 13 of the Rules for the Conduct of Legislative Business, ask that any papers or returns relating to the Bill which is before the Council, any Minute which may have been recorded by your Excellency's Government, and any correspondence that may have passed between your Government and the Secretary of State, may be supplied to me? That rule says— 3-25 P.M.

'Any Member may ask for any papers or returns connected with any Bill before the Council.'

I beg to ask for these papers."

His Excellency the President :—" There are no papers or returns in the custody of the Secretary to the Council."

The Hon'ble Pandit Madan Mohan Malaviya :—" My Lord, my request is that if your Excellency's Government has minuted upon this Bill, and if any correspondence has passed between the Secretary of State and your Excellency's Government, copies of these may be supplied to me."

His Excellency the President :—" Rule No. 13 says—

'The President shall determine, either at the time or at the meeting of the Council next following, whether the papers or returns asked for can be given.'

I will give the Hon'ble Member an answer to-morrow."

The Hon'ble Pandit Madan Mohan Malaviya :—" Thank you. My Lord, at the conclusion of his speech in introducing this Bill to-day, the Hon'ble the Home Member reminded us, non-official Members of the Council, of the great responsibility which rests upon us in dealing with this matter. He went further and he told us that we shall be judged as to our capacity for having a large measure of responsibility by the attitude that we take up in relation to this Bill. My Lord, I entirely endorse that view, though I do not agree with the Home Member as to his object in making this remark. I hope that not only we non-official Members but that we all of us, official as well as non-official Members, will approach this question with a full sense of the responsibility which rests upon us in dealing with such an important matter.

" Now, my Lord, the motion before the Council is that the Bill in question be referred to a Select Committee. In the first instance, I raise my respectful protest against the manner in which Government have proceeded in connection with this Bill. My Lord, I cannot imagine any Bill of greater or graver import than the Bill which seeks to deprive His Majesty's subjects of the protection for their liberty which they at present enjoy under the law. This Bill proposes to substitute for the judicial machinery that is provided under the authority of Parliament and of the Imperial Legislative Council for dealing with cases affecting the liberties of His Majesty's subjects, an extra-judicial authority, an executive authority, to deal with such cases. I submit, my Lord, that if there was any Bill which required to be proceeded with strictly according to the forms and methods laid down in the rules relating to legislative business before this Council, this was one. Those rules provide that ordinarily when a Bill is introduced, a motion is to be made in the first instance that the Bill may be published in the official Gazette or Gazettes as the Council may direct. In the present case action has been taken under the exceptional provision contained in rule 23, which says : 'The Governor General, if he sees fit, may order the publication of a Bill, together with the Statement of Objects and Reasons which accompanies it in such gazettes and languages as he thinks necessary, although no motion has been made for leave to introduce the Bill. In that case it shall not be necessary to move for leave to introduce the Bill, and if the Bill be afterwards introduced, it shall not be necessary to publish it again.' My Lord, I take it that this provision has been incorporated into the rules to

meet cases other than the one which is now before us. The departure from the ordinary method prescribed has resulted in this: here is a measure of very great importance. If a motion was made for leave to introduce it in the ordinary way, it would have been followed by a motion that the Bill should be published in the gazettes and circulated for opinions. The Bill would have then been circulated in the country and among public bodies for opinion; the opinions of High Court Judges, of other Judges and Magistrates, of the various Local Governments and of public associations interested in the question would have been elicited. These opinions would have been circulated to Members of this Council, considered by your Excellency's Government and possibly also by His Majesty's Government; and after all this had been done there would have been a motion made in this Council that the Bill should be referred to a Select Committee. But what has actually been done here? The Bill was published in the Gazette, if I am not mistaken, on the 19th January or some date about that.....

The Hon'ble Mr. A. P. Muddiman :—" On the 18th January. "

The Hon'ble Pandit Madan Mohan Malaviya :—" Thanks. Now, a fortnight after that the Bill is introduced here to-day under the provisions of rule 23, without any motion for leave to introduce it. I would not have concerned myself about the formal motion to ask for leave to introduce it, but for the fact that the great advantage which the legislature intended to secure by such a motion in the first instance, namely, the publication of the Bill in the Gazette and its circulation for opinions before it should be referred to a Select Committee, has been lost to us by the course followed.

" The second thing which I complain of is that, while rule 25 provides that ' after publication of a Bill in the Gazette of India, the Select Committee to which the Bill may have been referred shall make a report thereon. Such report shall be made not sooner than three months from the date of the first publication in the Gazette of India, unless the Council orders the report to be made sooner '; here is a proposal emanating not from an ordinary Member, but from the Home Member, who held judicial offices for many years, disregarding that very useful provision and proposing that the Select Committee to which it is proposed to refer this Bill should report on or before the 6th March 1919. I submit, my Lord, the Home Member owed it to the Council and the public to explain what reasons of State existed which justified or led the Government to adopt a procedure which violates the ordinary rule which has been laid down for dealing with legislation. He has not done so; I hope he may yet do so. But I submit in the absence of any such explanation, the public have a right to complain that the procedure which has been followed has been followed. Your Lordship is aware, the whole Council is aware, that these Bills have fallen like bolts from the blue upon the public. Your Lordship is aware, most of us are aware, how numerous are the meetings which have been held and are being held in different parts of the country to send up protests against the introduction of these Bills. Is it fair to the public to hurl such measures as these over their heads without the slightest attempt at justifying the procedure?

" My Lord, I have no sympathy with sedition; I am sure no Member has. We hate sedition, we reprobate it. We do so for two reasons, it is bad in itself, and it hurts my own countrymen. I am sincerely sorry for the young men who have been misled into the paths of sedition; I grieve their fate. I would do anything reasonable which it were possible for us to do to save them from their fate. We have no sympathy with either anarchical crime or revolutionary crime. When necessity for legislation to deal with anarchical or revolutionary crime has been shown, the proceedings of this Council bear witness to the fact that we have given our whole support to the measure that was introduced. I will refer to the passing of the Defence of India Act. When Lord Hardinge's Government found it necessary to introduce the measure known as the Defence of India Act, every Member of this Council lent his support to that proposal. We supported it as a temporary measure. I will invite attention to a few passages in the debate on it which made this clear, one from Lord Hardinge and another from Sir Reginald Craddock. Speaking on it, Lord Hardinge said: 'You will observe that it is a war

measure, to last during the period of the war and for six months afterwards. There is no one in the land more jealous than I am of the honour of India and of the striking reputation of India for loyalty that India so rightly deserves, and I am not disposed to allow the honour and fair fame of India to be tarnished by the criminal acts of a few ill-balanced minds at a moment when India's sons are shedding their blood on the battle-field for the King-Emperor and country.' Sir Reginald Craddock, who introduced the Defence of India Bill, said in the course of his speech : ' In the first place, my Lord, it is a great tribute to the loyalty of India and the peaceful behaviour of the vast majority of her people that, while the British Government passed a Defence of the Realm Act at the outbreak of the war, we are now in India half way through the eighth month of the war, before we have found it necessary to enact a similar measure in India, for, though under another name, it is really a Defence of the Realm Act to which we are to-day inviting the assent of the Council.' Sir Reginald Craddock went on to say : ' The powers that we are now asking for are the powers which in our opinion are required for the purpose of securing the public safety and the defence of British India, and we require these powers only during the continuance of the war and for six months thereafter ; that is to say, until the excitement and disturbance of the general calm, which the state of war engenders, have had time to subside.'

" The position having thus been made clear, every Member of the Council gave his whole-hearted support to the proposal. I need not quote from the speeches of all the Members who spoke, but I beg to quote one short sentence from a speech of mine on that occasion. I said :—

' The living present demands from us that in the exceptional circumstances which have been created by the war, we should lend our loyal support to the Government in adopting every measure which is necessary in order to prevent and crush mutinous acts, to preserve public peace and to protect the civil population, the law-abiding people from the evils of the misguided action of a few ill-balanced minds. We are all agreed, as the debate has shown, to the principle of the measure so far as it is needed by the exigencies of the situation for securing the public safety and the defence of the realm '.

" I think it cannot be questioned by any Member of this Council or by anybody outside that we have given cordial support to the Government in passing a very exceptional measure such as the Defence of India Act when its necessity was made clear to us. We did so because we were told and realised that it was an exceptional measure needed by the exceptional times of the war, and that as a temporary measure it was to come to an end six months after the war. Now, my Lord, what is it that we are now asked to do ? We are asked by the Hon'ble the Home Member to give our support to this exceptional measure being placed permanently on the Statute-book, and we are told that if we shall not do so, we shall be regarded as not sufficiently responsible men. I ask the Hon'ble the Home Member, and I ask every Member of the Government to tell us, what are the facts which justify such a course. I agree with Mr. Jinnah that no case has been made out for such a measure. I submit that we must have a case made out for placing provisions of such an exceptional character in the permanent Statutes of the land.

" What is the position we have to deal with ? There are two kinds of crimes, revolutionary and anarchical, which the Rowlatt Committee have dealt with. Let us analyse the two. The Rowlatt Committee have not said that there was any such crime in existence in this country up to the year 1897. The first crimes to which they have referred were the unfortunate murders of two English officers in Poona in 1897. They have shown that the murder of one of these was the result of an accident, and that of the other was accountable by the fact that strong feelings had been excited against him among the people by the maladministration of plague measures in Poona. Now before I proceed further, I may say at once that so far as the findings of the Rowlatt Committee are concerned, I accept the facts which they have stated largely as they have stated them. We have to exercise caution because, as the Rowlatt Committee have themselves pointed out, they have not placed before us all the evidence upon which they based their conclusions ; and without any disrespect to any Member of the Committee, without any reflection against them or any suggestion of a want of a desire on their part to do the right, we may not accept their conclusions as entirely satisfactory. The Committee have

pointed out that the great mass of the statements which they had to rely upon were statements which, unfortunately, with few exceptions, they felt themselves bound to treat as confidential and that they were not able to place them before the public. The reasons which they have stated for not doing so are, I submit, not satisfactory. They have pointed out that there would be difficulty created if they had published their statements. I submit, however, that that is not a sufficient reason. In paragraph 35 of their Report they mention the reasons why they have not been able to place the statements as a whole before the public. These may have been very good reasons in their judgment for withholding the statements, but I submit that if the evidence had been made public, it is possible that the public might have come to different conclusions from those at which the Rowlatt Committee arrived. We had no doubt a Judge of His Majesty's High Court, presiding over the Committee. We also had several other experienced officers on it, one of whom I have the pleasure of seeing on my right; we also had on it an Indian Judge and a non-official Indian lawyer; all very honourable and capable men. But we know that judgments of the Judges of the High Courts have been set aside by His Majesty's Judges of the Privy Council. It is possible that the conclusions at which the Rowlatt Committee had arrived might not have been accepted by other Judges if they sifted the evidence. Take another instance. A special tribunal that sat at Lahore three years ago recommended that a certain number of persons, I think 24, should be hanged; as the result of the appeal that was made to your predecessor, 17 of these persons were saved from the gallows, because your Excellency's predecessor and his advisers felt satisfied that the tribunal in question had not sifted the evidence correctly. Therefore, granting that the considerations which prevented the Rowlatt Committee from publishing the statements may be very weighty, the fact does stand in the way of our accepting all their influences and conclusions. But with this reservation, I may say at once that I accept the statements of facts they have arrived at. They have been very careful in making those statements, and these will help us in deciding what should be our attitude in regard to the Bills before us.

"Now what is the position disclosed by the Committee's report with regard to this class of crime? There was a little crime in Poona in 1897; the Rowlatt Committee have dealt in their report with the prevalence and growth of revolutionary ideas in the Bombay Presidency. Their report shows however that the movement is practically dead in that province; they do not refer to anything that has happened since 1914 so far as Poona and the Bombay Presidency are concerned. Obviously therefore so far as Bombay is concerned, there is no need for legislation of the kind here proposed.

"Let us now take another Province, let us come to the United Provinces. The Committee have gone exhaustively into the state of things that exist in the United Provinces. They have come to the conclusion that though a little trouble was imported into the United Provinces, there was no indigenous anarchical tendency in the provinces. Their statement is to be found in paragraph 124 at page 136. After citing a few incidents that had taken place, regrettable and deplorable incidents though they were, they say :—

'These incidents show clearly that so far the revolutionary movement has not taken hold of any section of the people of the United Provinces, but that the position and circumstances of Benares will always render that city a point of peculiar peril.'

This does not show that in the United Provinces there is any need for perpetuating this legislation.

"Let us now look at the case of Bihar and Orissa. The Committee in paragraph 119, at page 130, say :—

'We find that the province of Bihar and Orissa has been slightly affected by the revolutionary movement, although it has been the scene of two of its worst crimes.'

Even assuming that these crimes were revolutionary, I submit that so far as Bihar and Orissa are concerned, they have not made out a case, at least the Committee's Report does not lend support to the proposal to perpetuate this extraordinary legislation there. The Committee go on to say: 'This province, however, has been used, and will in all probability continue to be used—', there I beg to differ from them because they have not stated any reason

for it—'both as a seed-bed for propaganda and as a harbour for absconders.' This might be said of any part of the country. But what is more important is, as the Committee observe, that 'hitherto the character of the general population and the vigilance of the authorities, assisted by the operation of the Defence of India Act, have been able to prevent graver mischief.' That is an assumption which we can always make in favour of any province. But there is no ground shown to justify a supposition that Bihar and Orissa stand exposed to any danger of anarchical crime being revived or taking root in that province.

"Let us now come to the Central Provinces. In paragraph 126, at page 139, of their Report, the Committee say: 'The Central Provinces did not, so far as we are aware, again come into contact with dangerous movements until February 1915.' The first was in 1908. From 1908 to 1915 they did not notice any trouble in the Central Provinces 'until in February one Nalini Mohan Mukharji, one of the Benares conspirators, was deputed by Rash Bihari to induce the troops at Jubbulpur to join the rising planned by the *Ghadr* party for that month.' But in the next page, in concluding the chapter, the Committee say:—

'The incident is a neat illustration of the way in which a revolutionary from outside sows evil seeds in a place free from indigenous disaffection and also of the way in which, by firm action taken in time, mischief can be arrested.'

Clearly, the Central Provinces do not support the case for proposed legislation.

"Then, my Lord, let us look at the case of Madras. Regarding Madras, after reviewing certain events that took place there, the Committee have stated their conclusion in paragraph 153 of their Report. They say:

'Since the trial of the Tinnevelly conspirators (in 1911) there does not appear to have been any trouble from criminal revolutionary conspiracy in the Madras Presidency. We do not consider that there was any indigenous revolutionary movement in Madras, and but for the influence of a certain gentleman and the revolutionaries plotting in Paris and Pondicherry there would have been no trouble in Southern India.'

"Now, my Lord, whether the inference that the trouble in Southern India was due to the influence of a certain gentleman is correct or not, I cannot say; but the fact to which I wish to draw attention is that the Committee do not consider that there was any indigenous revolutionary movement in Madras, and that there had been no trouble there since 1912.

"I shall next take the case of the Punjab. In the Punjab, as the Committee have pointed out, the trouble arose in 1914 because of the return of certain emigrants from Canada and other countries. Now, my Lord, we know how that trouble arose. We know that there has been for a long time past a real genuine grievance in the minds of those Indians who have gone out of this country regarding the treatment which has been meted out to them in other parts of His Majesty's Empire. A certain number of Indians returned very much dissatisfied with the treatment they had received, and there were the incidents generally known as the Komagata Maru incident and the Budge Budge riot wherein a number of His Majesty's subjects were shot dead. With great respect, I submit that the fault for that deplorable incident did not lie entirely upon those poor people who died or were interned or otherwise suffered, but upon those also who could have taken steps to prevent misunderstanding. However, these and other emigrants returned to the Punjab and disaffection spread through some of them amongst a certain number of people. There was trouble, therefore, due in this case not to any indigenous revolutionary tendencies in the province, but to the return of a certain number of Indians from Canada and other countries. Then the Government of India was requested by the Punjab Government to pass the Defence of India Act and to frame rules under it by which they could deal with the situation. The Government of India did help the Punjab Government by passing that legislation at one sitting of this Council. The result was that by the application of the rules passed under the Defence of India Act, those unfortunate tendencies, these evil tendencies subsided in the Punjab. A number of persons were tried and punished by Special Tribunals; a certain number of persons were interned; there were other measures taken. But the trouble such as it was soon subsided. On the 31st January 1916, the

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Punjab Government reported that the returned emigrants were settling down, and that the feeling among the Sikhs was reported to be more satisfactory than at any time for some years. And the great fact which stands out in connection with the whole episode is that the people at large helped the Government, they co-operated with the Government in tracing these misguided men, and even in trying to bring them to justice. In paragraph 145 of the Report the Rowlatt Committee say :—

'Under the Defence of India Act 30 persons were interned in jail, 113 were restricted to their villages, 25 were restricted to other villages. Under the Ingress into India Ordinance 331 persons were interned between October 1914 and December 1917, of whom 224 are accounted for by the period of October 1914 to April 1915. Two hundred and forty-two of the 331 have been released. Of the emigrant revolutionaries, 2,576 in all have been restricted to their villages. We are informed that so valuable has been the work of the Sikh advisory committees in regard to restrictions, internments, relaxations and releases, so strong has been their influence on the side of law and order, that although a considerable number of suspects continued to arrive in the Punjab after the troubled period, especially from the Far East, at the end of 1917 the total of persons restricted in any way under the Ingress Ordinance was only 914, while the number of these at first restricted and then released from restriction had risen to 1,513, and releases were steadily progressing.'

The Committee say that there was a Sikh official witness who said that there were thousands of persons who had returned to India with revolutionary ideas still at liberty. That may be the caution which an official anxious to show his zeal or show that he is a very far-sighted man, might express. But the fact remains that in the Punjab, what little disaffection was imported from outside has subsided, under the operation of the Defence of India Act, and I submit, my Lord, no justification has been shown—I should not say shown because I do not think the Committee could be accused of being anxious to show such justification,—no justification is to be found in the Rowlatt Committee's Report for perpetuating an extraordinary piece of repressive legislation in the Punjab. I will invite attention to what they say in paragraph 146. They say :—

'It is evident that the *Gadhr* movement in the Punjab came within an ace of causing widespread bloodshed. With the high-spirited and adventurous Sikhs the interval between thought and action is short. If captured by inflammatory appeals, they are prone to act with all possible celerity and in a fashion dangerous to the whole fabric of order and constitutional rule.'

Now I draw attention to this to show that the action taken by some Sikhs ought to be judged in the light of these remarks. They had cause for irritation, and to that irritation which they brought back when they landed in India other irritation was unfortunately added, as I submit with great respect but with a clear mind, by the action which was taken by the authorities at the time. The Sikhs being an impressionable people, if they were to be misled.....

The Hon'ble Sir James DuBoulay :—"The Komagata Maru incident!"

The Hon'ble Pandit Madan Mohan Malaviya :—"Yes, the Komagata Maru and the whole of the incidents which took place at Budge Budge. Now, my Lord, I draw attention to this to show that the Sikhs being the impressionable people that they are and the action of the Sikh Advisory Committee having led to calm being restored, the existence of any ill-feeling among the Sikhs does not justify the perpetuation of the Defence of India regulations.

"Then, my Lord, we come to Bengal. Every one knows that there was no revolutionary or anarchical crime in Bengal until 1905. Your Excellency and your distinguished colleague Mr. Montagu have dealt with the causes that gave rise to discontent in Bengal. In considering the present diseased state of the minds of a few persons in that province, we ought to bear in mind all that has preceded. The facts which have been stated by the Rowlatt Committee and which have been referred to in the Reforms Report show how discontent arose in Bengal. Up to 1905 Bengal was entirely free, I submit, from any revolutionary tendency. In 1904, Lord Curzon introduced the Universities Bill. As has been pointed out by the Committee that unfortunate measure marked the beginning of a period of misunderstanding between the Government and the people. Following closely in its

wake, came the Partition of Bengal, carried out, violently carried out despite the protests of the people, and the evil effects of that measure are too well known to require any mention. Everybody knows what the people of Bengal did after that event. Everybody knows how memorials went up from a hundred platforms, from numerous associations, how meetings of respectful protest were held all over the Province of Bengal; how deputations waited on the Lieutenant Governor, how every effort was made in this country and in England to have that measure rescinded, but the attitude unfortunately taken up at that time was that the matter was 'a settled fact,' and that it should not be unsettled. Now, my Lord, in view of the attitude taken up by the Government, the people of Bengal were driven, in the first instance, to adopt every constitutional measure which it was open to them to adopt to impress the justice of their contention upon the Government. They adopted the vow of *swadeshi*, they adopted the vow of boycott. Their object was to draw the attention of the English public and the English Ministry to their piteous cry, that their province should not have been cut asunder as it had been, that it should yet be re-united. Those cries did not succeed in drawing the attention of the authorities. The authorities kept up a *non possumus* attitude; they would not be moved. The result was that all the leading men, the men who were in the forefront, the men of the most moderate views who had waited upon the Governors and the Government in deputation, who had sent up memorials, who had sent up reasoned objections, found themselves unable to satisfy the people why the Government should not reconsider the matter. It was then that ideas of a new character began to force themselves upon the minds of some people. As the attitude of the Government stiffened, the attitude of the younger men also stiffened The young men were naturally more impressionable than the older people. Those of us who are growing old know that this is a natural law. Now the younger men could not bear what the older men could bear, therefore naturally but regretfully, I say they were led into paths of unconstitutional agitation. And we know what happened in subsequent years. With the prosecutions and the punishments of students the feeling between the authorities and the general public grew from bad to worse from day to day. It was in this state of things that some of the young men were led into the path of unconstitutional agitation. As I have said before, nobody deplores that this should have been so more than we Indians do. We regret it for the sake of the country generally, and for the sake of the young men in particular. We wish they had not been so misled. But in dealing with an evil, it is not statesmanship to shut one's eyes to the facts which gave rise to the evil, to propose remedies without recognising the root cause which gave rise to the disease. Now, my Lord, this state of things went on in Bengal. And though the partition was undone, was unsettled by His Majesty the King Emperor when he visited this country in 1911, the evil ideas which it had given rise to were still left behind. There were some men who had been led into the wrong paths of revolutionary ideas and methods, and they continued in them. This is a matter to be deplored, to be provided against and not to be overlooked in dealing with the situation. Then the war, which broke out in 1914, brought in another trouble. We had then the *Gadhr* party also making an effort to create mischief in India. Now, my Lord, I beg the Government to keep these two causes, or rather these two movements separate in considering the questions. Such disaffection, such sedition as existed before the war could be traced to causes, which one could understand The attempts which were made during the war by the *Gadhr* party and by the Germans to mislead Indians also was a cause which contributed to disaffection and to evil results. Now the war has ended, and happily with it are ended all German plots and all the evil which they gave rise to. Therefore, we can thankfully brush aside all the incidents relating to the *Gadhr* party, and we can fervently and reasonably hope that none of its evil results will be seen in India any more. So far as the problems created by the war are concerned, we are entitled to ask the Government to consider that the war being over, and a new state of things having come into existence, the evils which the war gave rise to will not be heard of again.

"We have then the other class of revolutionary ideas and crimes which did not, entirely according to the Report of the Rowlatt Committee, spring out of the

war. Now here, too, my Lord, let us fairly and squarely look facts in the face. Let us recognise, as your Excellency and Mr. Montagu have done in your Report, what is the real state of things in the country. Your Excellency and your noble colleague have in the first chapter of your Report taken a survey of the political situation in India. You have pointed out how the desire of Indians to have a larger and larger share in the administration has been growing; you have pointed out how pledges have been unredeemed and promises unfulfilled, except partly; you have pointed out how good measures like those of self-government which have been promulgated have not been allowed to fructify; how grievances which Indians have been repeating year after year in a constitutional manner have not been attended to.

"Now, my Lord, for thirty years since the Congress came into existence in 1885, the thoughtful people of India, the most responsible men among the educated Indians, have year after year brought a number of grievances before the Government in this country and in England. They have stated in a most reasonable form what those grievances are, and they have in the most reasonable spirit asked for the remedy of those grievances. Some of them have been remedied; some reforms have been introduced for which we are thankful; but the measures that have been introduced have not been sufficient. The causes for complaint have not been sufficiently removed. There are three factors which have come into prominence out of this state of things. There are the economic causes of discontent, there are the social causes of discontent, and there are the political causes of discontent. The economic causes have been partially noted by the Rowlatt Committee where they point out how the *bhadralog* in Bengal have found it more and more difficult to find suitable employment; that the schools have not been sufficient; that the education has not been of a varied character, and that new avenues of careers have not been provided for young men which might relieve the pressure so far as the Government services and offices are concerned. They have received a largely literary education and the two doors open to them, namely, Government service and the Bar, are both overcrowded, and cannot accommodate a limitless supply of men. That has given rise to serious hardship and discontent. Then there is the social factor. We know, unfortunately, that the dealings between Europeans and Indians in this country are not altogether as they should be. We know that even in the matter of the services the distinctions of race which ought to have been obliterated, which it was promised would be obliterated so long ago as 1833, which it was promised would be obliterated when the gracious Proclamation of Her Majesty was issued, have not been removed. We know that scholars and students in Bengal saw that a man so distinguished as Dr. P. C. Ray, now happily knighted, though he was acknowledged to be one of the finest scholars in the country, was still rotting in the Provincial Educational Service when men far inferior to him had been put into the Indian Educational Service. Young Indians saw many such cases. They saw their own countrymen, eminent and honest, devoted to learning, devoted to the cause of education, passed over in favour of younger men from England. All this tended to add to the discontent which was felt in Bengal. So also in regard to other matters. Then there were political causes. They found that there was much in the state of things in the country which the Congress had long sought to remedy, which the best men in the country had long endeavoured to rectify by constitutional appeals to Government which had not been rectified. The Committee have taken note of a letter in which one of the revolutionaries condemned the Congress. I can very well understand why he should condemn it. The Congress would not encourage revolutionary ideas and unconstitutional methods. And, finding that the appeals of the Congress, repeatedly addressed to the Government, over the course of 25 years or so, had failed to achieve their purpose, it is a matter for regret but not for surprise, that some young men were misled into thinking that unconstitutional methods would be more efficacious.

"Now, my Lord, what is the Rowlatt Committee's finding in regard to the origin of these revolutionary and anarchical ideas? They have found that the movement was the outcome of perverted religion and perverted patriotism. They have found that these men had got the idea that it was their religious duty, that it was their patriotic duty, to attempt to subvert the English

Government. They have found that these young men were not prompted, at any rate in the beginning, by any sordid idea of personal gain. These young men made up their minds to sacrifice their lives in the cause to which wrongly they gave their adherence. Now that being so, what is it that should be done? I submit, my Lord, with great respect and with great reluctance, that the responsibility for this state of things coming into existence does not rest merely upon the young men who went the wrong path. It rests upon the Government, it rests upon the administration, both Provincial and Imperial, it rests upon all of us who failed to persuade the Government to adopt the right measures to remedy the grievances, to set them right. But while we take note of the causes, we do regret the effects. And why is it that I am asking your Excellency's attention and the attention of the Council to this fact now? It is for this reason, that, while we all deplore the existence of such anarchical tendencies, such revolutionary crime as exists in Bengal, we should take note of the root causes which have fed those diseases, and strike at those causes as well as their effects. It is only then that we can reasonably hope for a lasting improvement in the state of things which we all join in regretting and condemning. That is what I most respectfully and most earnestly submit to your Excellency's Government and to the Council. Let us adopt those measures which will be efficacious in removing these root causes as well as their effects.

"Now, my Lord, as I have shown, there are two classes of revolutionary and anarchical crimes. The one was connected with and sprang out of the war. So far as that is concerned, the existing provisions of the Defence of India Act are ample to deal with this class of cases. As my esteemed friend the Hon'ble Mr. Banerjea has pointed out, those provisions will continue in force for six months after the war. Any disaffection, any anarchical or revolutionary tendency arising out of or by reason of the war, can well be dealt with under the Rules made under the Defence of India Act. So far as this class of cases is concerned, therefore, it is not that we are running away from making provision for anarchical or revolutionary crime. There is neither veiled nor unveiled sympathy in the minds of any reasonable Indian with such crime. We all deplore, we all detest it We want to root it out, but we want to apply the right methods, and not to foster it by adopting wrong methods.

"As regards the other class of revolutionary crime which has arisen out of and has been fed by political, social and economic causes of discontent, we reasonably expect that as reforms are introduced things will alter and improve. Now let us see what is the state of things in regard to that? Whatever was the position before the war, during the war, His Majesty's Government have made a most momentous pronouncement in regard to their relation with India. They have said that the goal of British policy is responsible government in India. Now that goal may be achieved in five years, in ten years, in twenty-five years, or even in fifty years. But the goal having been fixed I have not the least doubt, no reasonable man has any doubt, that that goal will be achieved. It must be. Your Excellency and your colleague, Mr. Montagu, have made a most memorable contribution, for which we are grateful, of proposals for progress towards that goal. These proposals are before the Government. Your own Report on constitutional reforms furnishes the most excellent reasons why we ought to take a fair, a judicial and even almost a lenient view of the misguided activities of the few men who have gone into the wrong path. You yourself have pointed out how many causes of complaint there have been; how many matters there are in which Indians have been complaining without their grievances having been redressed. You have formulated your proposals for redressing those grievances. The matter is before the Government. The Reform Committees which have been appointed will shortly recommend what should be the franchise, for the reformed Councils, and what should be the subjects which should be made over to them. We are expecting that the Statute which is to initiate the proposed changes will be introduced into Parliament about Easter.

"Now, my Lord, this is the hopeful state of things in which we find ourselves. There is another important circumstance to which I wish to invite attention. The war has come to an end. During the war India made a glorious contribution to the cause of the Empire. Whatever doubts, whatever misgivings some men might have had before the war about the loyalty of

India, India has proved her loyalty by the blood which Indians have shed in the several theatres of war. India has proved her loyalty by the contribution in men, money and munitions which she has made, and to which your Excellency made a handsome reference even this morning. Now, in the face of that loyalty, in the face of that deep-seated, wide-spread, proved loyalty—loyalty which has been demonstrated beyond cavil or dispute, what is it that we, the people of India, expect of the Government of India? We expect that even if there should be some misguided youths who have not yet been influenced by the new trend of events, we should deal with patience with them. We should trust to liberal and just measures of reform in order to win them over to the side of constitutionalism and of the Government.

"Now, my Lord, in the Report to which I have referred so many times, your Lordship and the Right Hon'ble Mr. Montagu said:—

'We have tried to describe India's chief pre-occupations at the time when war broke out. The war has affected India in many ways, but above all it has become the predominant factor in the present political situation. Whatever qualifications may be needed in the case of particular classes, the people of India as a whole are in genuine sympathy with the cause which the Allies represent. The reasons of the entry of Britain into the war appealed to the educated classes, and they have never faltered in their allegiance. However much they may find fault with the Government, they are true in their loyalty to the British Crown, and, as it would be easy to show from their own lips, they fully recognise and value the higher aims of British policy.'

In the next paragraph your Excellency and your noble colleague said:—

'The loyalty of the country generally was emphasised by the attempt made by very small sections of the population to create trouble.'

I submit, my Lord, that with that deliberate conclusion which you have embodied in the Report and which represents nothing but the fact, I submit that with that conclusion established beyond cavil or dispute, we were led to expect that even if the evil tendencies had not entirely died out, the Government of India would resist, most strongly resist, any suggestion for legislation of the character that is now proposed; that in recognition of the part that the people of India have played in this great war, the Government of India would stand forth boldly and firmly to oppose any suggestion that there should be a perpetuation of special emergency measures which were adopted for the period of the war under the Defence of India Act; and I must say, my Lord, with respect, but with regret, that we have been disappointed beyond expression that the Government of India itself should have come forward at this juncture with the proposed legislation. I ask, my Lord, that the Government should consider its position. I ask that the Government should not lead people to think that all the great sacrifices which they have made during the war have already begun to be forgotten. The Government should give no ground, no room for thinking that the magnificent effort of India during the war has already begun to be forgotten. The Government should show by their acts that they still do trust the people, and that what they say about the deep loyalty of the people is a reality which they believe in and not an unreal sentiment expressed to flatter the people. I submit, my Lord, with great respect, that that is the attitude which the Government of India should adopt. I fear that by taking up the attitude which the Government of India have taken up, they have already to a great extent destroyed—I regret to say it—the excellent results which had been produced by four years of joint effort during the war, four years of comradeship in the war, and all the sentiments of mutual trust and esteem which it engendered. But it is not too late yet to mend, it is not too late yet to rectify the mistake; and I appeal to your Excellency that the Government should, with that sense of responsibility which the Hon'ble the Home Member asked, and rightly asked, us non-official Members to display, I appeal with all respect and deference that the Government of India should reconsider the situation and as a very special measure withdraw the Bill. Now, my Lord, what would be the result if this recommendation is accepted? I know the Government of India, constituted as it is, does not easily go back upon any legislation which it has set its heart upon. We know that to our regret; but I submit that, if in view of the very special circumstances of the situation, in view of the very special circumstances which the war has brought about, if at this time the Government should unite with the non-official Members in burying the Bill,

no evil will result to the country, no evil will result to anybody, and the Defence of India Act will continue in operation for some six months after the war. The ordinary legislation which stands in the Statute-book provides ample means for dealing with all classes of crime, and if six months after the war is over, if after-measures have been introduced to remove the causes which have fed discontent, which have given rise to revolutionary and anarchical tendencies, the Government should still find that there are young men who are working in wrong paths, and that the ordinary law is not enough to deal with them, then, my Lord, would be the time for the Government to consider what measures should be adopted—not a measure like the present one—but what other reasonable measures should be adopted.

"It is proposed that this Bill before us should extend to the whole of India. I have endeavoured to show that the Rowlatt Committee themselves have pointed out that revolutionary tendencies and crime have not been discovered in every province equally. They have shown that in some provinces there has been no indigenous activity of that kind, and I submit that with that Report before us we cannot reasonably legislate equally for all India. In the summary of their conclusions, paragraph 166, they set forth the conclusions at which they had arrived. They say:—

'We have now investigated all the conspiracies connected with the revolutionary movement. In Bombay, they have been purely Brahmin and mostly Chitpavan.'

The report shows that it is not a living thing in Bombay now. There did exist certain individuals there, they were punished for their crimes and there was an end of their activity many years ago.

'In Bengal', the Report says, 'the conspirators have been young men belonging to the educated middle classes.' Now that is a statement to which I beg to invite your Excellency's particular attention and the particular attention of the Council too. It is not that you are dealing with criminals or men addicted to crime. The Report says: 'The conspirators have been young men belonging to the educated middle classes.' I submit that a Government which has not been able to wean such young men from the evil tendencies in question, is not justified in blaming those young men alone for such tendencies. It is the part of Government, it is the part of statesmanship, to take every step which can rightly be taken to wean these young men, who a few years before did not show any criminal tendencies, from the path into which they have been misled. Then the Report goes on to say:—

'Their propaganda has been elaborate, persistent and ingenious.'

True, but that only shows that they are men of intelligence, men of education, and it should be easier therefore to wean them from the path of evil:—

'In their own province,' the Report continues, 'it has produced a long series of murders and robberies.'

This is unfortunately true; but we must try to adopt measures which will show these young men how very deplorable it is that they should indulge in any such activities, that they should commit murders and robberies, measures which will show them that a new chapter has opened, a new day is dawning on India—a day of liberalised administration, a day of greater recognition of the rights of Indians, of more adequate provision of careers for them, and of the treatment of Indians generally as they should be treated in their own country.

'In Bihar and Orissa', the Report says, "In Bihar and Orissa, the United Provinces, the Central Provinces and Madras, it took no root, but occasionally led to crime and disorder. In the Punjab the return of emigrants from America, bent on revolution and bloodshed, produced numerous outrages and the *Ghadr* conspiracy of 1915.'

'But I think we can safely say that it is not now a factor in the Punjab which would justify the proposed legislation.

"There is another sentence, my Lord, in that part of their Report to which I beg to invite attention. After stating that 'all these plots have been directed towards one and the same objective, the overthrow by force of British rule in India'; a silly attempt—'sometimes they have been isolated; sometimes they

have been interconnected; sometimes they have been encouraged and supported by German influence.'

"But the Committee go on to say—'all have been successfully encountered with the support of Indian loyalty.' I ask you, my Lord, I ask whether in fairness, whether in justice to that loyalty, the Government should not say 'No' to the proposals of legislation before us, whether it should not still rely upon that loyalty to curb these evil tendencies and to eradicate it from the land They go on to say: 'It is not surprising that in dealing with conspiracies so elusive and carefully contrived Government has been compelled to resort to extraordinary legislation.' But that work has been done; that extraordinary legislation will still be available for six months after the war; let it have its course till then and be done with it. Let us hope and pray that the evil will be dead in the new state of things which will dawn.

"My Lord, in the presence of this report, I cannot understand how the Government could make up its mind to propose legislation of the retrograde and repressive character, subversive of the principles of justice for which England has always stood up, which are the glory of the English constitution subversive of so many ideas of justice for the protection of the liberty of individuals? How could Government have made up its mind to introduce such a legislation and to propose that it should extend over the whole of India? I shall not be content with a mere general statement of the character of the legislation. I would invite the attention of your Excellency and of the Council to the actual proposals which the Committee have to put forward and show how they themselves looked at this question. In the first instance they have rightly raised a doubt to which attention has already been drawn by Mr. Chanda, about the competence of the Indian Imperial Legislative Council to introduce and pass a measure of such extreme severity and so far inconsistent with the established rules of evidence and justice. In paragraph 200 they say 'In making suggestions for legislation we have not considered at all whether it could be argued that such legislation is in any respect beyond the competence of the Governor General in Council. We have no authority to lay down the law on any such point, and any provisional assumption as the basis of our proposals would only cause embarrassment. We have proceeded therefore on the basis that any suggestions of ours which it may be decided to adopt will be given effect to by some legislature competent for the purpose.' I should like the Hon'ble the Home Member to tell the Council whether any note was taken by the Government of this paragraph in the report of the Rowlatt Committee, and, if so, whether any reference was made to His Majesty's Law Officers in England, to consult them on the question raised by the Committee.....

The Hon'ble Sir George Lowndes:—"I should like to intervene, my Lord, at this stage and state that no reference has been made to the law officers in England. There is no basis upon which such a reference could be made. If either of the two learned lawyers who have suggested that this Council is not competent to legislate would give us something more to go upon than merely that paragraph in the Report, we shall be glad to meet them; but at present there is not in my mind the faintest shadow of doubt that we have got the power to legislate. Whether we should do so is another question."

The Hon'ble Pandit Madan Mohan Malaviya:—"I thank the Hon'ble the Law Member for telling us that no reference was made. I take that as a fact, but I think in view of the fact that a doubt was raised by a committee which the Government themselves had appointed, a committee that was presided over by a Judge of the High Court of England and consisted of three other gentlemen whom the Government had selected to advise them, this matter deserved to be treated with greater consideration than evidently the Government treated it with. However, I am not going at present—possibly I may do so later—to give my friend all the reasons upon which a doubt has been raised as to whether this Council is or is not competent to deprive any fellow-subject of ours of the safeguards of liberty which the English law provides for him, which ensure that no man's liberty shall be interfered with, that none shall be

deprived of it for a day without a regular trial according to the ordinary rules of evidence and procedure laid down therefor. We have heard a great deal of the British character of the Indian administration. We have heard a great deal of the British sense of justice and of fair-play. I ask the Council, I particularly ask my Hon'ble friends, who are members of the British community, I ask them to say how they can really reconcile themselves to proposals which are embodied in the legislations we are dealing with. It seems to us impossible, incredible, that the British members of the Government should have without the fullest consideration agreed to such a course being adopted.....

(At this stage His Excellency the President left the Chair and the Hon'ble Sir George Lowndes took the Chair.)

The Hon'ble Pandit Madan Mohan Malaviya:—"May I ask, Sir, whether the Council may not now adjourn? The rules provide that the Council shall ordinarily go on till 4 o'clock and it is now half past four. I have not gone through two-thirds of what I have to say, and I shall not be able to....."

The Hon'ble the Vice-President:—"I am afraid you must go on with the remaining third."

The Hon'ble Pandit Madan Mohan Malaviya:—"I do not know that I shall be able to finish."

The Hon'ble the Vice-President:—"I hope you will."

The Hon'ble Pandit Madan Mohan Malaviya:—"I definitely propose, Sir, that the Council should now adjourn. If you will kindly turn to the rules, rule No. 3 of the rules for the Conduct of the Legislative Business of the Council says 'The Council shall ordinarily meet at 11 A.M., and shall not prolong its sitting after 4 P.M., unless the President otherwise directs.' There has been no direction that it should be prolonged, and I submit therefore that under the imperative words of the rules, namely, that the Council shall not prolong its sitting after 4 P.M., the Council should now adjourn.

The Hon'ble the Vice-President:—"If you think it necessary I will direct that the Council shall continue its sitting."

The Hon'ble Pandit Madan Mohan Malaviya:—"I again submit a point of order as to whether that direction should have been given before my motion was made. I submit if the direction had been given before the motion was made, it should have been unquestionable, but as it has been made upon my motion, I request the Vice-President to consider whether my motion ought not to prevail."

The Hon'ble the Vice-President:—"It is not open to the Hon'ble Member to question my ruling. I rule that the Hon'ble Member must proceed."

The Hon'ble Pandit Madan Mohan Malaviya:—"Mr. Vice-President, I have dealt before with the conditions which the end of the war has brought into existence, and I have submitted that in view of those conditions the Government should reconsider its decision. I have also submitted that when a question has been raised as to whether this Council is competent to deal with this legislation, it is at any rate a matter which should not be rushed through in the way in which it is proposed to rush it through the Council. In regard to the question as to whether this Council is or is not competent to deal with the Bill, I will deal with this matter later. Now, Sir, the position being what it is, I submit that the Government should consider the situation. I ask the Government to consider what are the provisions of the Bill to which it asks the Council to give its support. Let us look into them. In the

first place as I have already said it says—'Whereas it is expedient to make provision that in special circumstances, the ordinary criminal law should be supplemented and emergency powers should be exercisable by the Government.' Now, Sir, to make provision in special circumstances, to supplement the ordinary criminal law is a matter which, I think, is open to exception. If it was meant to pass a special Bill providing for a special procedure, as the Defence of India Act did, we could understand it. It would have been a measure of a temporary character, it would expire by efflux of time whenever that time was fixed. But, in this case, it is sought to make the measure a part of the permanent law of the land; it is sought to incorporate it in the Indian Penal Code and Criminal Procedure Code. My first submission is, that if there was a clear necessity for such a measure, if the Defence of India Act was not in existence, a special measure of a temporary character should have been passed, and this attempt to incorporate the measure in the permanent law of the land should have been abandoned. Then by sub-clause (2) of clause 1 the provisions are extended to the whole of British India. I submit that in view of the Report of the Rowlatt Committee, the Government should seriously consider whether there is any justification for passing any all-India legislation of this character. Let us assume for one moment, which I hope will not be the fact, that in Bengal tendencies of an evil character will not entirely disappear after the war. I am very sorry to make such an assumption, but let us do so. In that case it might be left to the Bengal Government to introduce legislation to deal with the crime that may show itself in that province. Does that justify the casting of a slur on the loyalty of the whole of India; the passing of a measure which would lead the outside world to think, that India was seething with disloyalty and discontent. The Punjab, the United Provinces, Bombay and the Central Provinces need not be grouped together with a province where revolutionary crime may be shown to exist. That is my second point. Part III says 'If the Governor General in Council is satisfied that scheduled offences have been or are being committed in the whole or any part of British India to such an extent as to endanger the public safety, he may, by notification in the Gazette of India, make a declaration to that effect, and thereupon the provisions of this Part shall come into force in the area specified in the notification.' What are these scheduled offences? They include offences which constitute grave charges against the person and honour of people. Is it right that they should be tried in that fashion? You want to provide for a speedy trial of such offences. It is evident to anybody that the Government of this country and of England have provided a most elaborate and careful procedure for the trial of grave offences; summary trials are restricted to ordinary petty offences, trials of a grave character are to be Sessions Court trials or High Court-trials; a very elaborate procedure has been provided, the question of delay has not been overlooked and the mere circumstance that it would cause delay need not lead anyone to propose legislation of the drastic character now before us. May I ask the Hon'ble the Home Member, or any member of the Government, what will be the gain on the one side by a speedy trial of such offences? There are certain offences the speedy trial of which is contemplated. It is not said that there shall be no trial, all that the Act seeks is a speedy trial, there is no suggestion to the contrary. It is not shown that there will be such a large number of offences of the character contemplated that the Courts will not be able to deal with them. The Rowlatt Committee have themselves shown a judicial mind when they state that they cannot say what the state of things will be after the war. In Chapter XVII they say 'The last part of our task is to advise as to the legislation, if any, necessary to enable Government to deal effectively with the difficulties that have arisen in dealing with conspiracies. This as expressed appears to us to be applicable to the state of circumstances under which the difficulties referred to were encountered. These difficulties have, however, been circumvented for the time being by special temporary legislation, and they have not been in operation at the time of our inquiry. When this legislation lapses, circumstances may have altered and the position may be better or worse.' They have not shut their eyes to the possibility that circumstances may so alter as to make it unnecesary to have legislation of a special character. They say it may be worse, no doubt, no sober, no responsible man can definitely

and firmly say that there shall be no crime in India after the war, no crime of a revolutionary or criminal character. England herself has not been entirely free nor have other European countries, while the bulk of the population has remained loyal. A maniac, a misguided man, one suffering from some aberration of the mind may commit some evil act, but that would not justify the passing for the country as a whole of such drastic legislation. They also say that when this legislation lapses circumstances may have altered and the position may be better. There have been two possibilities foreshadowed, one is that circumstances may alter and the position may be better; if that possibility should happily be realised, then there will be no need from the point of view of the Rowlatt Committee for such legislation. If unfortunately the other alternative should be realised, that is to say if circumstances should show that the position is worse then, as Mr. Jinnah has pointed out, the Council will regretfully but firmly lend its support to any special legislation which may be necessary.'

(At this stage His Excellency the President resumed the Chair.)

After referring to the special legislation which has enabled the Government to deal with cases of a special character by the help of the special temporary legislation which has been passed, the Rowlatt Committee go on to say in paragraph 175 of their Report.

'When this legislation lapses, circumstances may have altered and the position may be better or worse.'

"Now, I submit, my Lord that there are two possibilities which they hold before themselves. One is that circumstances may so alter and things may be so much better that the need for legislation may not arise. I submit we should hope and pray that this happier alternative may be realised. If it is realised then there will be no cause for such legislation as is proposed. If unfortunately the other unhappier alternative should be realised, then as my Hon'ble friend Mr. Jinnah has pointed out, it will be time for Government to propose a measure like the one before us or somewhat on the lines of the one that is proposed, less drastic I hope, but more amenable to the rules of justice than the present measure, but such a measure as may be needed to deal with the special circumstances which may have been found to exist. The Committee go on to say :—

'We do not think it is for us to speculate nicely on these matters.'

True, my Lord, it was not for them to speculate, but it is a serious thing and the Government and the Council have to speculate very carefully upon these matters, and they cannot in fairness to the people shut out, they cannot rule out, the other possibility, the brighter, the more hopeful possibility, of things improving. Then the Committee go on to say :—

'We must of course keep in view that the present war will have come to an end, but cannot say with what result or with what ulterior consequential effects or possibilities of consequential effects upon the situation.'

They did take note, my Lord, that these were possibilities. They did bear in mind that these possibilities might be realised, and I submit, therefore, that it would be fair and wise to hope for these possibilities and to work for these possibilities, and not to legislate in the conviction that these happier possibilities will not be realised and that evil will come. The Committee further say :—

'On the other hand, the persons interned under the Defence of India Act will be due for release and the terms of imprisonment of many dangerous convicts will be coming to an end.'

True, my Lord. But has not the Government already released a large number? Were we not told to-day that a large number has been released and a growing number is going to be released? Is there any danger or apprehension that they would again fall into bad ways? If danger should arise, the Statute-book does contain any number of laws, preventive and punitive, which should enable the Government to deal with cases that may arise. Then the second thing the Committee say is 'Further, there will, especially in the Punjab, be a large number of disbanded soldiers, among whom it may be possible to stir up discontent.' This, my Lord, is a most unkind sentiment. In view of the sacrifices which the soldiers of the Punjab have made, in view of the deep-seated loyalty

which they have shown by sacrificing their lives and everything else that they could in the cause of the Empire, I must say, with due respect, that it would have been well that Government had not taken this view. I no doubt see that they have said that 'it will be possible to stir up discontent.' But men who have stood the trial, men who have withstood all temptations and all efforts to mislead them during the prevalence of this great world-wide war, may be trusted to stand firm in their loyalty if later on anybody should wean them away from their loyalty to the King Emperor. These soldiers, my Lord, have seen something of the world. They have seen what a war is. They know better than people who have not been to the front what a war is, and I am sure they have also seen the majesty and the might of the British power. They are the least likely persons among whom discontent can be aroused now, and if the Government will take the right measures to recognise in practice, in reality, with generosity, the sacrifices which they have made, to improve the conditions under which they live, to educate their sons, to find more food for them, to make it possible for them to have more clothing, to provide them with better comforts, to enable them to live lives better than the lives of mere ordinary animals, I am sure no efforts will succeed to wean them away from their loyalty to the King Emperor and the Crown. At any rate, my Lord, sufficient unto the day is the evil thereof. Let us wait in patience. It is only just and fair that we should wait with patience until these soldiers who have fought in the cause of the Empire show any tendency to be carried away by evil counsels, then it will be time, not to adopt miserable measures like the one that is before us now, but to devise measures of a gentle character, the object of which should be to prevent them from falling into wrong hands and to keep them in the path of duty and honour. However, the Committee go on to say :—

'Nevertheless if we thought it clear that the measures taken against the revolutionary movement under the Defence of India Act had so broken it that the possibility of the conspiracies being revived could be safely disregarded, we should say so.'

They could not say so. I do not quarrel with them for their not being able to say so. But they say, 'if we thought it clear'. They do not think it clear, but they do not say that it is clear that the measures taken against the revolutionary movement under the Defence of India Act have not broken that movement. They do not say so. They simply say that they are not clear that the measures taken against the revolutionary movement have so broken it. Well, it is for the Government to consider whether it is clear that the steps that have been taken under the Defence of India Act and also the other circumstances which have come into existence, whether the changes that the world has seen, that India has seen, and that the people of India expect that they are going to see, whether those changes and those circumstances will not bring about such a change in conditions as to make it impossible that the revolutionary movement should again have any life in this country. They say 'if they felt clear' that the possibility of the conspiracies being revived could be safely disregarded, they would not have recommended such legislation, and I submit, my Lord, that the Government and the Council should not shut out that possibility from their purview and therefore should hesitate to legislate.

'That is not our view, and it is on this footing that we report,' say the Committee. Well, I do not quarrel with the view of the Committee which they honestly believe to be their view. But the Committee may possibly have come to a wrong conclusion. It often happens, I mean no disrespect to the Committee when I submit that the path of those who have to deal with certain events and to advise as to those events is different from the path of the Statesmen who have to consider what measures should or should not be introduced in the country. Judges of the High Court may be very eminent men to express an opinion as to what alteration should or should not be made in the law, but it is not for them to suggest policies ; their function is to decide cases and not to devise or suggest policies or legislation of so large, comprehensive and drastic a character as the one you have proposed.

" With due deference to the Committee, therefore, I submit that they were wrong in recommending that this legislation should be undertaken, and think that they should have leaned more to the possibility of a happier alternative being realised rather than considered the other possibility was greater.

"Then, my Lord, the next thing to which I shall invite attention in the report of the Committee is in paragraph 177. They have said clearly—'The measures which we shall submit are of two kinds, namely, *Punitive*, by which term we mean measures better to secure the conviction and punishment of offenders, and *Preventive*, *i.e.*, measures to check the spread of conspiracy and the commission of crime. We may say at once that we do not expect very much from punitive measures.'

"Now, my Lord, they say they do not expect very much from punitive measures. That being so, it was well that these punitive measures had not been suggested, but they are there and they rely upon the preventive measures. It is the preventive measures which they rely upon, and it is with these that the Council is at present dealing. Now, my Lord, what do the preventive measures recommend and what are the difficulties which the Committee felt confronted with in suggesting these remedies. I will invite attention to those difficulties. One great difficulty they have felt has been the want of evidence. In Chapter XVI they say, in paragraph 169 :—

'The main reason why it has not been possible by the ordinary machinery of the criminal law to convict and imprison on a larger scale those guilty of outrages and so put down crime is simply want of sufficient evidence.'

That is the conclusion they have arrived at. Now, my Lord, they refer to the cases in which this difficulty was felt. Now, if there is want of sufficient evidence, the right thing to do is to make provision for getting that evidence in a reasonable, just and proper way, and not by allowing evidence which by ages of tradition of British justice has been excluded as evidence. It is want of sufficient evidence which they are confronted with. Is it better that some persons who are guilty should escape or that many men should be exposed to the danger of their liberties, their honour being affected by a wrong piece of evidence being accepted. Evidence which has not hitherto been acceptable to British Courts should not become acceptable simply because a want of evidence has led to the acquittance or discharge of certain persons who are accused. This is not the only country where a number of persons who have been suspected of crime have been discharged or acquitted for want of evidence. There are other countries where this difficulty has been felt. The English lawyers and jurists have jealously guarded against any attacks upon the rules of evidence which constitute the best guarantee that justice, pure justice, shall be administered to every subject of His Majesty. Another difficulty which they have mentioned is the difficulty in establishing proof of possession of arms. They say :—'Where incriminating articles such as arms or documents are found, it is often hard to bring home the possession to any particular individuals. This occurs where the same premises are occupied jointly by undivided families, or even where a house or garden is used as a mess or meeting place for a number of youths.'

"Now, my Lord, what is the remedy? They go on, and I will quote the portion that follows :—'The latter difficulty is illustrated by the following passages from the judgment of the Sessions Judge of Dacca in the Adabari arms affair :—

'I hold it safe to infer that there was a close connection between the young men seen running away and the arms found, and that the garden was used as a meeting place for young men banded together for an illegal purpose. I also think it safe to infer that the appellants were members of this band. But I do not think it safe to infer that every member of the band had control of the arms and ammunition concealed in the garden. Unless this inference can be drawn the charge against the appellants has not been established . There is no evidence of the appellants being leading members of the band . . . . . From Lakhan chaukidar's evidence it appears that the teacher called Sarada was their captain, who used to teach them *lathi* play. For the reasons stated I hold that it had not been proved that the appellants had the revolvers and ammunition in their possession or under their control.'

That is a quotation from the judgment of the Sessions Judge of Dacca and then follows the following remarks by the Committee :—

'It is also true that evidence as to identity has in practice to be overwhelming. Having regard to the difficulties to which we have adverted, it is possible that the principle is a sound one. The same may perhaps be said of the feeling which seems to pervade these trials that there is but a slight presumption that a witness, however serious his testimony, is telling the truth. Indeed, even where a prisoner has confessed before a Magistrate in a way that makes

his statement evidence under the Indian Evidence Act, it is common for his advocate at the trial formally and seriously to 'retract' the statement for him. This is treated as making some difference. Even this may be a sound practice. But if it is, it only shows how difficult it is to establish anything.'

"It may be difficult; it may be regrettable; it may be that some criminals will escape punishment; but, as the Committee have themselves observed, it is possible that the principle is a sound one, it is possible that this is a sound practice and it is proposed that this practice should be departed from, should be given up, and evidence should be admitted which has hitherto not been treated by English judges and jurists either in this country or in England as proper legal evidence. I submit, therefore, my Lord, that the recommendations of the Committee are not such that the Government are bound to accept them. They felt a difficulty, they did not feel clear that the state of things which would come into existence after the war would be sufficiently satisfactory to make it unnecessary for any special legislation to be continued. They did not feel clear about it. The Government might feel clearer. They have made the recommendations on the basis that possibly the other alternative might come into existence. But, I submit that there is very slender ground upon which to base proposals of the drastic character which have been presented to the Council to-day.

"Now, my Lord, let us examine these proposals in some detail. In Part I it is said that 'if the Governor General in Council is satisfied that scheduled offences are prevalent in the whole or any part of British India, and that it is expedient in the interests of the public safety to provide for the speedy trial of such offences, he may, by notification in the Gazette of India, make a declaration to that effect.' Now, I have submitted before that the attainment of a speedy trial is not a need sufficiently grave, sufficiently serious, sufficiently in the interests of justice and the public interests to justify the introduction of a measure the object of which is to curtail the length of trials. It is not a sufficient justification. Even under the special procedure that is proposed in this Bill a trial may be protracted for several months. There may be any number of witnesses called; there will be three High Court Judges sitting. They will not record the evidence *verbatim*, but still there will be three High Court Judges sitting, they will take time in examining witnesses, and as there will be no appeal, a person who has the misfortune to be accused will have to do all that he can to strain every nerve, to spend every pice that he has, in order to procure the most excellent counsel's aid, to defend himself. I am not at all sure, my Lord, I say it with confidence. I am not at all sure that really, in practice, the length of the trials will be shortened. It will be that there will not be trials in the ordinary course, first before the Magistrate, then before the Sessions Judge, then before the High Court. It will be so, and possibly some time may be saved. But I am not at all certain that the time saved will be at all commensurate or at all worthy of the consideration of being weighed in the scale against the danger of injustice to the accused. Besides, my Lord—I can understand that during the time of war, when there are possibilities of contagion spreading in the country, the Government might desire to have trials speeded up. That may be possible, but when we come to normal times, when the war has come to an end and when peace has been fully restored, I cannot understand why there should be this desire for speedy trials. I ask you, my Lord, to consider what it means. It may mean that while you are following your motor car procedure, there may be some poor innocent soul crushed under the weight of that car, under the speed of that car. To him it may be the end of his life, his liberty and everything he holds dear. It will be no consolation to the State, it will be no gain to the public interests, that a man's trial was finished in 2 months rather than in 6 or in one month rather than in 3; but it may mean the loss of everything that a man holds dear, and I would ask any Member of the Council how he would like to contemplate the matter if he found himself placed in that position. I submit let us not secure a speedy trial at the sacrifice of doing an irreparable injury to a fellow man.

"Besides, looking at it from another point of view, as I have said, if a single Joint Magistrate hears a case and makes a preliminary investigation, if the matter comes into the Sessions Court, many matters and much of the

evidence is weeded out, and by the time the case comes before the Sessions Court, both the prosecution and the defence know where they stand. If the matter comes straight before such a tribunal as is contemplated, I am not at all certain that that will not involve longer delay, for the man knowing that he has no appeal from the judgment which that Court may pass, will be anxious to produce every possible evidence that he can and will have to summon all the witnesses that he can, and I therefore apprehend that the trial will not really be a speedy trial but that it will be prolonged.

"Now, my Lord, assuming that this condition for the application of Part I is found to exist, what follows? The Governor General in Council declares that certain scheduled offences are prevalent in the whole or any part of British India. I ask you, my Lord, seriously to ask yourself whether, after the war, it is likely that the offences which are mentioned in the Schedule or which it is proposed to put in the Schedule, are likely to prevail in the whole or any large part of British India? I submit that it is not likely. There may be spasmodic cases; there may be some few instances here and there of misguided young men or other people falling into wrong paths; but it is not likely that offences of this kind will prevail over a large area in any part of the country. Well, suppose that the Governor General is satisfied that such offences are prevalent in any part of the country, then what happens? In this country, my Lord, the Government has to take its information from the subordinate Government. The Governor General in Council is not directly in touch—except in very small parts of the country—perhaps with the local administration. The Local Governments are the Governments which must supply information to the Governor General as to whether scheduled offences are prevalent in the part of the country which is under them or not. The Local Governments must gather their information from the Police Department and from their subordinate officials. Now, my Lord, in this country we know what has happened in the past. While we deplore the evil tendencies which some young men have betrayed, while we deplore the crimes into which some young men have been betrayed, while we deplore the crimes that have been committed, we cannot forget that the Police has not a thoroughly clean record in this country, and the police, my Lord, have been guilty in the past of outrageous crimes which I do not want to refer at greater length. They have been brought to the notice of the Government in this Council, they have been brought to the notice of Parliament in England. Now, I do not want to say that those things will be repeated. I hope and pray they will not be; but is it right to shut out the possibility and to think that the police will always act in absolutely the right way, that there shall not sometimes be mischief created in order to show that in certain parts of the country certain crimes are prevalent? I do not say that it will be—I hope it will not be—but I beg the Government and the Council to remember the possibility of such ideas being circulated. And what will be the result? In that area, under clause 4 of the Bill,—

'Where the Local Government is of opinion that the trial of any person accused of a scheduled offence should be held in accordance with the provisions of this Part, it may order any officer of Government to prefer a written information to the Chief Justice against such person.'

"Now, my Lord, the clause says 'where the Local Government is of opinion that the trial, etc., etc.'. I ask you, my Lord, how is the Local Government to arrive at a decision? It must have the fullest evidence before it before it can come to a safe and satisfactory conclusion that a fellowman should be deprived of the safeguards of justice which the ordinary law provide. I should like to know how many members of the Government would like to take that responsibility upon themselves, and I should like further to ask that if such cases should be numerous, is not the danger of their coming to wrong conclusions one which ought to be taken into account in dealing with this legislation? The Local Government being of opinion that the trial of any person accused of a scheduled offence should be held in accordance with the provisions of this part, it may order any officer of Government to prefer a written information to the Chief Justice against such person. What follows?

'No order under sub-section (1) shall be made in respect of, or be deemed to include, any person who has been committed under the Code for trial before a High Court, but, save as

aforesaid, an order under that sub-section may be made in respect of any scheduled offence whether such offence was committed before or after the issue of the notification under section 3.'

"What follows, then, my Lord, is that this man is not given an opportunity before the Chief Justice to show cause why his case should not be tried under the special provisions herein referred to. He is not to be given that opportunity. His fate is sealed. The Local Government being of the opinion that he should be tried under the special provisions of this Bill any officer can give written information to the Chief Justice and the Chief Justice is powerless. The Chief Justice has not the power to ask the man to show cause why he should not be tried according to the ordinary law, or why he should be tried according to this law. The Chief Justice has no option; he must try the man according to the special provisions of this Bill.

"Now, my Lord, what is the material upon which this order is to be passed? Sub-clause (3) of clause 4 says :

'The information shall state the offence charged and so far as known the name, place of residence, and occupation of the accused.'

The Hon'ble Mr. A. P. Muddiman:—"I desire to draw your Excellency's attention to the fact that this debate is on a motion to refer the Bill to Select Committee, and the general principles of the Bill only should be discussed at this stage, but it seems to me that the Hon'ble Pandit is taking each clause separately."

The Hon'ble Pandit Madan Mohan Malaviya:—"May I explain, my Lord.....

His Excellency the President:—"You are not at liberty to discuss the details of the Bill."

The Hon'ble Pandit Madan Mohan Malaviya:—"I beg your pardon, my Lord. I want to explain the matter from my point of view for your Excellency's consideration."

His Excellency the President:—"There are certain rules and principles of debate which are usually observed on these occasions, and on this particular motion the principle of the Bill only is to be discussed, and then subsequently you will be able to discuss questions of detail. I think you are abusing the patience of the Council in pursuing any other course this afternoon."

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, I am sorry that you think I am abusing the patience of this Council. I think I am doing my duty. I submit for your Excellency's consideration—I will stop if your Excellency wishes—that here is a Bill which it is proposed to refer to the Select Committee; a special procedure has been followed; I can only speak once on this motion; and I am giving all the reasons I can for saying why this proposal to refer the Bill to Select Committee should be defeated, should be dropped by the Council. I submit, my Lord, with great deference, that I am entitled to give every single reason that I can in support of my proposal; but if your Excellency thinks I should not, I will stop.....

The Hon'ble Mr. A. P. Muddiman:—"I only meant to suggest that the Hon'ble Pandit was taking every individual provision and discussing it separately. I did not suggest that the general principles should not be discussed by the Hon'ble Member."

His Excellency the President:—"No one has suggested that the Hon'ble Member should not discuss the general principles of the Bill; but as the Hon'ble the Secretary to the Council pointed out, you are dealing with each particular provision of the Bill separately. I hope the Hon'ble Pandit will obey my ruling and discuss the principles and not the details of the Bill."

The Hon'ble Pandit Madan Mohan Malaviya :—" I bow to your Excellency's ruling. I shall refer to the provisions of the Bill only in so far as they involve a consideration of the principles. I shall do that and in doing so my reference to the provisions will be only for that purpose and to that extent.

Now, the next point —may I continue, my Lord?"

His Excellency the President :—" Proceed."

The Hon'ble Pandit Madan Mohan Malaviya :—" The next point to which I would invite attention as another matter of principle involved is that referred to in section 6.

That section says :—

' The Court may sit for the whole or any part of a trial at such place or places in the province as it may consider desirable :

Provided that the Governor General in Council, if he is satisfied that such a course is expedient in the interests of justice, may, by notification in the Gazette of India, direct that the Court shall sit for the whole or any part of a trial at such place or places as he may specify in the notification.'

" Now, I submit, my Lord, that one of the principles of British justice is that the trial of a person who is accused of a crime shall be held in open Court at a place which is open to the public, and I submit that this provision which gives power to the Court to decide that a trial shall be held in a particular place, is an infringement and violation of that principle. To that extent, I submit, it goes against the principle which is at present embodied in the Codes.

" Then, my Lord, I come to another very important principle which is embodied in section 10. I should be very sorry if I should give the impression by any of my remarks that I am not fully respecting your Excellency's ruling. I am trying to limit myself to questions of principle, and I hope your Excellency will please take it from me that I have no wish to say one word more so far as the details are concerned, except in so far as they refer to principles. Now, my Lord, in section 10 it is said that :

' The Court shall be required to make a memorandum only of the substance of the evidence of each witness examined and, subject to the adjournment provided for by section 9, shall not be bound to adjourn any trial for any purpose, unless such adjournment is in its opinion necessary in the interests of justice.'

" Now, my Lord, one of the most important principles relating to the recording of evidence has been that the exact words uttered by a man when he was arrested or by other men who were examined at a particular time should be before the Court. I have myself had the honour of practising the profession of law for many years, and I know, my Lord, how careful, how jealous the Court is in noting down the exact words which have been used by an accused person. This practice has been so strongly insisted on in the United Provinces that the record which is kept of the statement of an accused person, made in the vernacular, is looked into to find out exactly what he said. Sometimes a single word makes a great deal of difference; the insertion or omission of a word may lead to his being deprived of his liberty or to his being able to save his liberty. So I submit, my Lord, that this principle which is proposed to be introduced is dangerous. I submit, my Lord, that anybody who is charged with such serious offences as will be put into the schedule should have the opportunity of having every word of the statement which affects his life or liberty recorded. Now, my Lord, sometimes a trial takes months, sometimes it takes weeks. I have known some Judges who can carry a great deal in their heads of the evidence they have heard; but they can carry after all only a small amount. I do not think that any Judge will take it upon himself to say that he will be able to carry all the nice points that arise in evidence in a long trial in his head, and that, therefore, there is no danger of his being led into error by the exact language used by a witness or an accused person not being recorded by the Court. I submit that here is a departure of principle which is worthy of consideration.

"Then, my Lord, I will not go into any more details, but there is one of a cardinal character, namely, that which is embodied in section 17. That section lays down that—

'The judgment of the Court shall be final and conclusive, and, notwithstanding the provisions of the Code or of any other law for the time being in force, or of anything having the force of law by whatsoever authority made or done, there shall be no appeal from any order or sentence of the Court, and no High Court shall have authority to revise any such order or sentence or to transfer any case from such Court .....'

"I submit, my Lord, that this is a very grave departure in principle from the rules which have been hitherto laid down for the trial of offences, which enable a man to know what the charges are that are brought against him. Then the matter goes before either a Sessions Court or a High Court. There a judge or judges sit to hear and record the evidence and to come to a conclusion. We are all human beings, and judges also are liable to err like everyone else. It is possible that two or three or more judges sitting together to hear a case in the first instance may attach too much weight to certain evidence which they ought not to, and may not attach the weight to some other evidence that they ought to. If they are to try the case from the beginning they start with ideas relating to the accused from the beginning to the end; and there is the possibility. I do not say more, there is the possibility of their judgments not being correct. Where a man's life is concerned, where a man's honour or liberty is concerned, is it fair to deprive him of the opportunity of having his case considered by another tribunal, by another two judges who will be able to bring a more detached mind to a consideration of the circumstances? I submit this is a very great departure from the principles of justice which have hitherto been embodied in our Codes. Then, my Lord, another important thing is that one embodied in section 18. Now, the result of section 18 is that a statement which was hitherto not regarded as admissible in evidence will be regarded as admissible in evidence; and the condition imposed is this: where the statement of any person has been recorded by a Magistrate and such statement has been read over and explained to the person making it and has been signed by him, or the statement of any person has been recorded by the Court, but such person has not been cross-examined (at present this will not be admissible, my Lord, under the existing rules of evidence in the Evidence Act and of the best Codes that we have) such statement may be admitted in evidence by the Court if the person making the same is dead or cannot be found or is incapable of giving evidence and the Court is of opinion that such death, disappearance or incapacity has been caused in the interests of the accused. I submit, my Lord, this is a very dangerous and novel principle introduced in the Bill. Hitherto, the Courts have insisted upon the accused having had an opportunity to cross-examine the man whose statement was to be used against him. If that opportunity was not available that statement was not used against the accused. Now, my Lord, it is urged that if the Court is of opinion that such death or disappearance or incapacity to give evidence has been caused in the interests of the accused—that, my Lord, as my friend Mr. Jinnah points out will create a case within a case and that lets in a great deal of danger and injustice being done if this novel principle is accepted. I can at least understand that under section 114 of the Evidence Act if evidence which should have been produced is not produced, there may be a presumption made against the person who does not produce it, or if the Court is satisfied that the accused had had a hand in the disappearance of this evidence it may make a presumption against him and it may take that into account; but I submit that to admit the statement of a man who out of enmity or out of any other evil motive or under the influence of some enemy of the accused makes a statement is going too far, the person who got him to make that statement knows or suspects that it is not the true statement. Now if this man by any chance happens to die or is removed, and if some evidence is given which satisfies the Court that the man was removed in the interests of the accused person, the statement of that man becomes evidence. I submit, my Lord, it is a very great wrong which lurks there to the accused person; hitherto the Courts have stuck to the principle that the person against whom a piece of evidence is to be used must be given an opportunity of cross-examining the man who has made the statement against him, and this section proposes to depart from that principle. This is wrong.

"Thus far I have dealt with Part I of the Bill. I will now go on to Part II. Now, my Lord, this is more dangerous than even Part I, and the principles, which are involved in it are such, my Lord, that I submit with great respect Government should not accept them and should reject them. These are preventive measures. 'If the Governor General in Council is satisfied that movements which are, in his opinion, likely to lead to the commission of offences against the State are being extensively promoted in the whole or any part of British India, he may by notification in the Gazette of India make a declaration to that effect, and thereupon the provisions of this part of the Bill shall come into effect in that area.' Now, what does happen ? If in the opinion of the Local Government there are reasonable grounds for believing that any person is or has been actively concerned in such area in any movement of the nature referred to in section 20, the Local Government may by order in writing containing a declaration to that effect give all or any of the following directions, namely : Then follow the directions. I submit, my Lord, that this is a very dangerous provision. Hitherto the principle has been as it is reiterated in the Criminal Procedure Code, that if the Government has any reason to suspect that a man is concerned with offences and the evidence cannot be proved against him, there is a procedure provided to ask him to give security or to bind him over or to make investigations about it, and when material has been found to justify a prosecution being launched against him, to prosecute him. Hitherto it has been the judicial Magistrate who has been asked to deal with such cases ; a complaint is made by the Superintendent of Police or the District Magistrate or by any private individual against a certain man ; then the Code provides that the Magistrate shall call upon that man, that he shall record evidence and call upon the man to give evidence against it, and where there is ground to bind him over or to direct him to furnish security or some such thing. The Magistrate would deal with the case, in which case there is an opportunity for a revision against the order of the Magistrate by a higher authority. What is substituted for that is the opinion of the Local Government. Now, my Lord, I will give you one instance. Mr. Tilak was bound over to give security in a certain case a couple of years ago or less than two years ago. The Magistrate asked him to give security. He appealed and had the order revised by the High Court. The High Court set aside that decision and let him free. Now, if this Act comes into force, if in the opinion of the Local Government any person is in that position the fate of that person would be sealed ; he will have no chance of going to the High Court. The Local Government's opinion is law ; it wil have deprived him of liberty, locked him up without giving him a fair chance of having the matter tried in a judicial way. I submit, my Lord, that is a dangerous principle and ought to be eliminated from the Bill. The Bill bristles with principles of a very novel and dangerous character. What the Bill does is this : the Local Government has to express the opinion first that a man is of that character and thereupon that opinion being formed, the Local Government has to issue orders which under the existing Code a judicial authority would do. Having done that, the Local Government goes to the investigating authority and that investigating authority has to investigate the matter as to whether the Local Government's order is right or wrong. I submit, my Lord, that is putting the cart before the horse ; it is a preposterous procedure. The right thing to do is to give the man a chance before you shut him up ; here you shut him up, you pass that order, create a black mark against him and then constitute an investigating authority to consider. What is it to consider ? After the Local Government makes the order under section 21, such Government shall (it is imperative ; it is not left to the discretion of the Local Government) as soon as may be, forward to the investigating authority to be constituted under this Act their statement in writing setting forth plainly the grounds on which Government consider it necessary that the order should be made, and shall lay before the investigating authority all material facts and circumstances in its possession in support of its action.

"Then, my Lord, the investigating authority shall hold an inquiry *in camera*. That is a departure from existing principles. It is said 'the investigating authority shall then hold an inquiry *in camera* for the purpose of ascertaining what, in its opinion, having regard to the facts and circumstances adduced by the Government, appears against the person in respect of whom the order has

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been made. Such authority shall in every case allow the person a reasonable opportunity of appearing before it at some stage of its proceedings and shall, if he so appears, explain to him the nature of the charge made against him and shall hear any explanation he may have to offer, and may make such further investigation (if any) as appears to such authority to be relevant and reasonable.' The right thing is to let the matter go before a Magistrate or before a High Court Bench; why should there be executive officers in place of judicial officers? Is there not a danger of injustice being done when the Local Government arrives at conclusions on materials set before it? This is a principle which is novel and ought to be discarded. Then, my Lord, there is another principle of a novel character which is incorporated in the first proviso which says that 'the investigating authority shall not disclose to the person whose case is before it any fact the communication of which might endanger the public safety or the safety of any individual.' I submit that my liberty is all to me, and unless I am found to be unworthy my liberty must be protected. I submit that this is a wrong procedure. If a man is assaulted or accused, he has the right to know by whom and there is a danger of injustice being done if these facts are withheld. This is another case of the subversion of principles which have been always honoured in the United Kingdom and wherever British Courts have been established. The next sub-clause says 'subject to the provisions of sub-clause (2) the inquiry shall be conducted in such manner as the investigating authority considers best suited to elicit the facts of the case; and in making the inquiry, such authority shall not be bound to observe the rules of the law of evidence.' Now, your Excellency, as a member of the Bar you know what the rules of evidence are and how jealously judges have guarded against any attack upon these rules, and here the Bill lays down on behalf of Government that the investigating authority shall not be bound to observe the rules of the law of evidence. That is connected with the statement of the Rowlatt Committee that many persons were unpunished simply for want of sufficient evidence. If some persons went unpunished for want of sufficient evidence let them go unpunished, the world will suffer less by that than that one innocent person should be punished and deprived of his honour and liberty under a wrong procedure. This Bill wants to put this on the Statute-book. Now, my Lord, I come to the third part, the whole Bill is in progression, the second part is stiffer than the first part and the third part is stiffer than the second. Now in the third part it is said 'if the Governor General in Council is satisfied that scheduled offences have been or are being committed in the whole or any part of British India to such an extent as to endanger the public safety, he may by notification in the Gazette of India make a declaration to that effect and thereupon the provisions of this Part shall come into force in the area specified in the notification.' Then the next clause goes on 'where in the opinion of the Local Government there are reasonable grounds for believing that any person has been or is concerned in such area in any scheduled offence the Local Government may make in respect of such person any order authorised by section 21.' This is a plain and unvarnished attempt to substitute the executive for the judicial. I submit that is subversive of all principles of justice. How is the Local Government to decide whether any particular person has or has not been concerned in scheduled offences without giving him an opportunity of defending himself by the law as provided; no Local Government should be permitted to sit in judgment upon him in the manner proposed. Then the Bill goes on to say that the Local Government may order '(*a*) the arrest of any such person without warrant; (*b*) the confinement of any such person in such place and under such conditions and restrictions as it may specify; and (*c*) the search of any place specified in the order which, in the opinion of the Local Government, has been, is being or is about to be used by any such person for any purpose prejudicial to the public safety.' I submit that this is arming the Local Government with very great powers; the judicial and executive have been separate departments under British administration, let them continue so. You have claimed, and rightly claimed, a great deal of glory for your system of justice; do not, I pray you, touch that system in the manner in which it is proposed to touch it, let them stand separate; the constitution of England does not contemplate that any executive authority shall sit in judgment on any man or deprive him of his liberty or his

honour; that function has been entrusted to the judicial Courts properly constituted. The Bill goes against that principle completely; this is in reality substituting the Local Government for the judicial Courts. The Bill next says 'the arrest of any person in pursuance of an order under clause (*a*) may be effected at any place where he may be found by any police-officer or by any other officer of Government to whom the order may be directed. Sub-clause (3) An order for confinement may be carried out by any officer of Government to whom the order may be directed and such officer may use any and every means to enforce the same.'

Clause 34 says :—

'Any person making an arrest in pursuance of an order under clause (*a*) of section 33 (1) shall forthwith report the fact to the Local Government and, pending receipt of the orders of the Local Government, may by order in writing commit any person so arrested to such custody as the Local Government may by general or special order specify in this behalf.'

"Now, my Lord, I am entitled, if I have erred, to have an opportunity of knowing where I have erred, and of defending myself. The Local Government issues an order and the man is not only arrested but is locked up in custody. I do not know, my Lord, how such a proposal has commended itself to any Member of this Council.

"At this late hour I shall not go into the details which are dealt with in the last part. Now I ask your Lordship to consider whether, in view of the very cautious way in which the Rowlatt Committee has put the case for legislation, in view of the fact that they have accepted one alternative which has been the unhappy and dark alternative, and that they have regarded the bright one, in view of all the changes that have happened and are going to happen, in view of the great part which India has played in the war, in view of the loyalty of the Princes and people of India which has been acknowledged in high quarters, I ask, my Lord, is this the time to introduce a measure of this kind? I would remind the Council of what the Government did in South Africa. In South Africa General Botha fought against His Majesty's Government in the Boer War. How did the Government treat him? They established self-government in South Africa and made friends with him, and in this great war the part which General Botha has played and the magnificent services which he has rendered have been acknowledged with gratitude by British Statesmen and the whole world has admired him. That, I submit, is the way to win people who are subjects of His Majesty who may be led into wrong paths; that is the way to win people by liberal administrative measures. Let race distinctions be obliterated; let the recommendations which have been made in your Lordship's and Mr. Montagu's Report be adopted with such further recommendations as have been made by public bodies and let the question of the Services be dealt with in the liberal manner in which it has been suggested in the Report. Let Commissions in the Army be thrown open to Indians. Let there be industries multiplied and encouraged. Let there be fresh courses of education and fresh careers provided to young men. Then there will be gratitude in the land; there will be satisfaction in the land; there will be contentment in the land, and we shall not hear any more of revolutionary crime. If there should be any crime still lurking anywhere, the way to deal with it will be a much gentler and a more parental way, and not the way which has been suggested here. For these reasons, Sir, I oppose the motion that this Bill should be referred to a Select Committee. I submit that the Bill should be dropped."

The Hon'ble Mr. K. V. Rangaswamy Ayyangar :—"It is already high time, your Excellency. . . . 5-50 P.M.

His Excellency the President :—"You have 10 minutes Mr. Ayyangar."

The Hon'ble Mr. K. V. Rangaswamy Ayyangar :—"My Lord, we are very thankful to your Excellency for the toleration and forbearance with which you have heard the opinions of the opposite camp. Your Excellency went so far as to suspend all rules and allow the first two speakers 45 minutes and the third 150.....

His Excellency the President :—"That is not the case, Mr. Ayyangar. Read your rules."

The Hon'ble Mr. K. V. Rangaswamy Ayyangar:—" My Lord, by objecting to a Bill like this a certain section of the press pronounces unjust judgment on us thus: 'Those who oppose the Bill lay themselves open to the obvious inference that they secretly sympathise with the rebel and the sedition-monger, and that only a wholesome regard for their own skins keeps them from openly throwing in their lot with these enemies of Indian Society' It was also regrettable that a responsible member of the Government gave vent to a similar sentiment some time ago. First of all, one should be devoid of any sense to seek the help of an assembly like this for the protection of the type of the individual who is sought to be tackled by this Bill. The absurdity of such a purpose should be apparent even to the least brained. Secondly, it is more the society that is the sufferer. It is the hands of the clock of their progress that are said to be set back. All the bad reputation is to the society, and it is the society that suffers from losses to person and property more than the members of the governing race. When all these should weigh with us to support any and every means to weed out the objectional elements, why should the whole of India without the wonted acrimonious party dissensions vehemently oppose these Bills? I should say that it is the result of the civilised century we live in and also due to the imbibing of the British spirit. Drunk deep in the methods of the British administration and assimilating the true spirit of justice, we cannot but oppose such a piece of legislation. Had a primitive Government three centuries ago commanded us to give them counsel as to how they should be guided in such a situation, unhesitatingly we would have advised them to resort to more imposing and summary forms of punishment that would at once go to the heart of the people and terrify them by these methods. As councillors of Timur and Nadir Shah we might have countenanced remedies of the most drastically deterrent character, such as burying the offender waist-deep in the market-place and causing him to be trampled upon by an elephant. But which is the Government that asks our assent? It is the Government that gives a place in the Cabinet to a Sinnfiener, a Bolshevick and an open rebel. It is the Government with up-to-date liberal institutions and whose national pride lies in the best forms of the Government. We surely cannot give our counsel as a primitive ruler would expect us to give. The illustrious committee which has advised the Government to adopt such measures were furnished with at least a one-sided evidence to come to their conclusion. In the absence of even that evidence and with blanks and asterisks at our disposal, how could the Government really expect assent to this Bill from us. Further, we have seen how all the assurances that the Press Act and the Defence of India Act would be used only against controlling anarchism and enemy action, respectively, have been set at naught by the executive and how these Acts have been used to put a stop to political and constitutional activities. Many who supported these measures were said to have repented for their actions after it was too late.

" When the recommendations of so many other Committees and Commissions await giving effect to, to hurry up the recommendations of the Sedition Committee, especially at a time when the Peace Conference is sitting now, displays disproportionate attaching of value to activities of mushroom growth. It gives a handle to the traducers that India is badly governed and it has to be kept down only by repression. It also gives edge to political agitation and a section hails it as then alone there will be the counter-effect of strong sentiments and alienation of feelings.

" Now what is it that we are doing? Admitting the existence of political crimes, are the terms of reference and the actions of the Committee thereon correct? Are private crimes less dangerous than the political crimes? Will not the approvers in private crimes be harassed in the same way as those in public ones? Will not the Jury and the evidence be obsessed even in crimes of private character? The differentiation by the Government between the two crimes is quite blameworthly and deplorable. The action suggests that the one crime is more serious and unpardonable while the other is not so. And is there any parallel to these measures to be found anywhere, in any

of these civilised countries? What must we say of the unheard of provisions which deny to the political offender the right of appeal and those ordinary safeguards guaranteed to the merest cut-throat and the murderer? Is political crime more heinous, more deleterious to society than the worst crime against property and person, that it is proposed to create special and altogether arbitrary Courts and arm the executive with unheard of powers to deal with it? Why must one who simply exceeds the bounds of restrained expression be treated as if he had forfeited all the rights and privileges ensured to common criminals? Why is the Government so suspicious of the ordinary rules of procedure and of evidence that it is proposed to suspend the most wholesome of them in dealing with political offenders? The Bill also displays an exaggerated suspicion not only on the people, but also on the Judges and the Jury. If not, why should there be the powers to create special tribunals and dispense with the Jury. Criminals who commit crimes for private purposes may harm the Jury in the same way as those for public purposes; the same number of cases where assaults are made on the Judges and the Jury even in criminal trials other than political may be cited if required. Does the remedy of a civilised Government lie in giving a differential treatment to different crimes and in dispensing with the ordinary laws of the jurisprudence which is, perhaps, the only pride of the British Government? By all means improve the methods of detection so that their reasons and arguments for implicating an individual may stand the test of the ordinary proceedings and cross-examinations. Because a branch of the Police Department is unable to stand to a certain test then the proper way is to make the department more efficient. It is certainly not to reduce the test. I am reminded of a member of a depressed class petitioning to some of the Educational authorities to reduce the standard of test in the University examinations for the convenience of their class. No other parallel can be cited. To meet the inefficiency of the detecting branch or to hide their inaccuracies, laws unknown to jurisprudence are invented, established rules of evidence and the jury system are set at naught and a great encroachment on the liberty of the people is made.

"I think economic trouble it is that has made this section desperate. I do not come to their defence and suggest that they cannot but be otherwise, but I say these Bills are a worse remedy. These only aim at the summary ways of sending them to the prison and unless the root cause which is the economic trouble is relieved, it would be very difficult to cope with the existing accommodation in the prisons and the increasing defiance of authority necessitated by enconomic strain.

"With these few words I beg to oppose the Bill."

SGPI, Delhi—173 LD—20-2-19—80.

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Extract from the Proceedings of the Indian Legislative Council assembled under the provisions of the Government of India Act, 1915. (*5 & 6 Geo. V., Ch. 61.*)

The Council met at the Council Chamber, Imperial Secretariat, Delhi, on Friday, the 7th February, 1919.

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CRIMINAL LAW (EMERGENCY POWERS) BILL—contd.

The Hon'ble Rai Bahadur B. D. Shukul:—"My Lord, after the eloquent speeches of my Hon'ble colleagues Mr. Bannerjea and Mr. Jinnah and the comprehensive survey of the whole situation and detailed examinations of the provisions of the Bill made by the Hon'ble Pandit Madan Mohan Malaviya, I do not think any elaborate argument is further needed to convince the Council of the utter inadvisability of adopting the measure which is now before us. But, my Lord, the principle involved in the Bill is so important, so serious and so far-reaching in consequences, that I do feel that I should not give a silent vote. The Bill affects the natural rights and liberties of the people, their freedom of speech and action, the tranquillity of their sweet homes and, above all, their future attitude towards the Government. In a matter like this, it is not only the spirit in which a measure has been conceived that has to be taken into account, but also the effect which it will produce upon the minds of the people in general, and the amount of hardship that its actual operation would entail. Judged by these vital tests, the proposed Bill will be found to be open to serious objections, as has been so clearly pointed out by the previous speakers. 11 A.M

"My Lord, we stand at the threshhold of a momentous epoch, we have just emerged victorious from the worldwide war, the greatest of all wars in history, in which Indian soldiers have fought, side by side with their European comrades, for the highest ideal of humanity, for defending the cause of justice and liberty, and for the establishment of the victory of right over might. To-day the ideas of freedom and liberty are pulsating the life of the nations of the world. Is this, I most humbly ask, an opportune moment when the Government should have brought forward a measure for the approval of the Council which marks yet another step in the policy of repression, which has never been known to have succeeded in achieving its purpose? My Lord, whenever and wherever it has been resorted to, it has only served to stiffen the people's determination for national freedom and to create a feeling of bad blood between the rulers and the ruled.

"Your Lordship and the Right Hon'ble the Secretary of State have just revived the buoyant faith of the people in the British sense of justice and their spirit of liberalization by inaugurating a noble scheme of reforms, and it is a sad irony of fate that your Excellency's Government should have thought of embarking upon a policy which would only serve to further feed the glowing embers of political discontent. My Lord, the present moment is a most delicate one. You hold in your hands the future of India. It is for you to mend or mar it, and our best hopes for the future of this great country are centred in your Lordship, and in the steady pursuit of a policy of wise conciliation on the part of your Excellency's Government, which your Lordship has already inaugurated and which I am sure you do not want to go back upon.

"My Lord, India has always been loyal to the British Crown. The outburst of loyalty and devotion to the Empire displayed by her people, particularly during the time of war, has established her claim to a place of trust and honour in the Empire, and it must be a matter of poignant grief to

us all that at a time when India has been led to hope to become ere long a self-governing unit of the British Empire, a hope which has now grown into confidence since the inauguration of the recent scheme of reforms, the Government should have thought the present to be an appropriate occasion for the introduction of this Bill. This is an occasion when we are in the midst of rejoicings and when the people expected many an act of grace from the benign Government in recognition of their loyal services. And consider, my Lord, what the feelings of the people would be when you foist this retrograde and regrettable measure upon them, instead. Indians after all are sentimental people, and any action of the Government which would tend to cast a slur upon their loyalty, particularly at this juncture, is sure to evoke universal discontent. My Lord, when I say this my motive should not be misunderstood. I have not the least sympathy with those misguided youths, the anarchists, who have disregarded all dictates of humanity and tarnished the fair fame of India, the holy land of *Rishis*. Nothing could be more repugnant to Indian sentiment and feelings. It is as much in the interest of the people as in that of the Government that anarchy should be stamped out of the country altogether, but, my Lord, I have my own doubts and misgivings as to whether the measure now placed before the Council will be able to attain that object. On an occasion like this I cannot help recalling to my mind the wise counsel given to the world by that philosopher and man of the world combined, I mean Bacon, who ordained that 'the surest way to prevent seditions is to take away the matter of them, which is of two kinds—much poverty and much discontent.' Repression may afford temporary relief, but as a radical cure it has never proved successful. This is why Lord Morley denounces the policy of repression as worse than useless. Unless and until you alter the very conditions which constantly tend to stir the existing evils into fresh activities of anarchism, how could you check it? The only right way is to find out the root cause, and the true statesmanship would then lie in removing it. Then and then only the Government can achieve the object in view, with which you have my full sympathy.

"The evil in itself which we are called upon to grapple with is not an old one. The very cult of anarchism is foreign to the nature of the people of India, and we have to congratulate the Government and the people that it has been nipped already, and how, not by mere force of repression. I have only to draw your Lordship's attention to the compliment paid to Indian loyalty by the members of the Rowlatt Committee. They state in their report in paragraph 166 that all (these conspiracies) have been successfully encountered with the support of India's loyalty, and I put it to the Council and to the Government whether it would be fair, just and expedient to put a premium upon that loyalty and pass a measure which would throw a serious reflection upon the character of the Indian people as a whole? This is an aspect of the question which I particularly wish to impress upon the earliest attention of the Council and the Government Had the proposal been to enact a temporary measure for a limited period, say for one year or so, the matter would have been quite different.

"But here you come with a different proposal altogether. You wish to place permanently upon the Indian Statute-book a piece of repressive legislation, which constitutes in itself a novel departure from the established principles of criminal jurisprudence, and which is regarded by Indians as casting a permanent slur upon the fair fame of the Indian Nation, and will, I am afraid, if passed into law, become a new source of discontent. My Lord, the feelings of the people with regard to the manner, in which the Indian Defence Act has been administered in the past, are not concealed from your Lordship. The people have been emphatic in their disapproval of the action taken by Government in the exercise of the extraordinary powers conferred upon the executive by that Act. So long as the war lasted, the people put up with any amount of inconvenience caused thereby, without a murmur, as they did not wish to create difficulties in the way of the Government. Now the war is happily over The imminent danger has passed and the era of peace and prosperity has once more dawned upon the world. At this juncture, any attempt to perpetuate measures justified by the exigencies of war and continue them in normal times and under

normal conditions, would not only be inexpedient, but I say unwise, and I say so advisedly. It will be fraught with dangerous consequences. It will raise a tremendous storm of opposition and will provoke an agitation of unparalleled magnitude hitherto unknown in the history of India, and I for one shall not advise the Government to take that risk. It is going against the very pledge that the Hon'ble Sir Reginald Craddock gave to the people on behalf of the Government while introducing the Defence of India Bill in 1915. He then assured this Council that those powers were required 'only during the continuance of the war and for six months after, that is to say, until the excitement and disturbance of the general calm, which the state of war engenders have had time to subside.' In view of these definite assurances, my Lord, on behalf of the Government, would it be fair to recede from the position when the war is over? Well, all of us are for the maintenance of law and order in the land. Keep order by all means, but excess of severity, my Lord, is not the path to order, to use the words of Viscount Morley. On the contrary, it is the path to the Bomb. We are as anxious as you are that India should have a long spell of peace and prosperity. We do not wish that India should be plunged into a state of anarchy and rapine, bloodshed and chaos. But, at the same time, we do not wish that India should become desperate and be forced to play the rôle of another Ireland in the East. While we are strongly of opinion that anarchy should be suppressed with a strong hand, it is our sincere desire that, in suppressing anarchism, you do not unreasonably infringe the natural rights and liberties of the people and do not frustrate their legitimate aims and aspirations.

"Well, so far as the present Bill is concerned, without entering into the details thereof, I make bold to say there is a real danger, as the people anticipate, that the Bill will seriously threaten the liberties of even the innocent people. You do not only legalise secret inquiries and trials, but you dispense with all rules of evidence. The accused has no chance to prove his innocence before he is arrested; you deprive him of the right of trial by the ordinary Courts of Justice; you deprive him of the right of trial by jury, and above all you withhold from him the right of appeal and revision. The provisions of the Bill on the whole are immensely wide and drastic, and yet they do not go to the root of the evil, and why? Obviously, because they do not affect the causes which helped the propaganda of anarchism to spread. The authors of the Report of the Rowlatt Committee state in paragraph 23 of the report that 'The education which the people receive is generally literary and ill-adapted to incline the youthful mind to industrial, commercial or agricultural pursuits; they have not succeeded in finding fresh outlets for their energies. Their hold on land too has weakened owing to increasing pressure of population and excessive sub-infeudation. Their economic prospects have narrowed, and the increasing numbers who draw fixed incomes have felt the pinch of rising prices.'

"My Lord, this is the crux of the whole situation. These are the real and important problems that the Government have to face and face them boldly. So long as you do not relieve the acuteness of the present situation of economic helplessness, so long as you do not adopt bold measures to make the Indian peasantry happy and prosperous, and so long as you do not improve the system of your education and made the prospects of the educated middle class brighter and more hopeful, and unless and until you satisfy the legitimate demands of the people and set aside all racial distinctions giving rise to perpetual discontent, rest assured, my Lord, that you may go on, if you will—as you have the power to do—employing measures of more and more drastic nature than those you propose even to-day, till you eventually exhaust your resources of repressive legislation, but you will never be able to achieve the object, which both you and we have in view, namely, the suppression of anarchism, and it is for your Lordship to consider whether it would be fair and expedient to permanently place upon the Statute-book a measure which may prove ineffectual in stamping out anarchism, but may yet cause unnecessary interference with the rights and liberties of those who are innocent. The Bill, I find, has already made the people nervous, protest meetings are being held all over the country, representations and protest telegrams are pouring in daily, and a violent agitation has already

been set on foot, and if the people have their own misgivings and fears about the operations of the Bill, the fault is not theirs, but of those who were responsible for indiscriminate administration of the Indian Defence Act in the past. The Hon'ble the Home Member has assured us that the provisions of the Bill will be used against no activities other than those of sedition, but may I ask your Lordship if similar assurances were not held out to the country by the Hon'ble Sir Reginald Craddock while introducing the Indian Defence Act? We have known but too well what these assurances are worth and we have been forced to the conclusion that the very system which is inseparable from the policy of distrust and suspicion underlying this Bill, is responsible for the miscarriage of justice, and it is for this reason, above all, that I hesitate to accord my support to this measure. I do so, not in any spirit of opposition, but from a sense of duty and as a token of the earnestness of my desire to whole-heartedly co-operate with you, in your attempt to prevent and suppress anarchism. Let me tell your Lordship that, if you really wish to have our whole-hearted sympathy and support, first take us into your confidence, give us full opportunity to examine for ourselves the whole material available on the subject and enable us to form our own independent judgment about them. Besides enlightening us on the subject, that will give to the country necessary time to think and consider. So long as this is not done, I for one would hesitate to accord my support to the Bill. My Lord, I fail to understand as to why the Government should be in such a great hurry about the enactment of this Bill. The war has been just over. The Defence of India Act has yet many a month to run its course. The early prospect of the new constitutional reforms being brought into force has considerably eased the situation. The effect of the release of a very large number of detenues has still to be seen. Why not let the country enjoy a little respite, and watch the result of the new reforms and the effect of the adoption of such ameliorative measures, as are recommended by the Industrial Commission? First pursue a policy of trust and conciliation, initiate reforms for which the people have been urging for the last 30 years, meet their legitimate demands, remove their wants and grievances and see how they behave. I am sure, my Lord, you will not have to be disappointed. Should that policy fail, and should you notice a tendency for increase in the number of anarchical crimes, then the time for adopting a policy of stiffer character will certainly come, and we shall all willingly co-operate, but not till then. My Lord, the Government called on us to co-operate with it, and so we did. While the war lasted we supported every measure which the Government thought fit to introduce for the purpose of maintaining law and order in the land, but now when there is all calm and quiet in the land, will it be too much to ask the Government to accede to the wishes of the people in this matter, and as appealed to by my Hon'ble friend Pandit Madan Mohan Malaviya follow the example of that great country England which has served as our ideal, on which are based all our future hopes and aspirations, and I hope and trust that the Government will withdraw the Bill. My Lord, do not forget that the existence of British rule in India is 'to implant those ideals of justice, law, humanity which are the foundations of your own Western civilization' and let not the Government of India do any act which is not consistent with those noble principles or fall short of the high expectations that India holds of you. If the Government do not heed this and let the Bill proceed, there will certainly follow a violent agitation the like of which India has never witnessed before, and the responsibility for the same will then be yours, my Lord, and not ours."

11-18 A.M. **His Excellency the President**:—"As the Hon'ble Pandit Malaviya is now in the Council, I will give him my decision on his request that he might be supplied with the minutes of my Government and any correspondence with the Secretary of State in regard to the Bill now under consideration. I have decided that the papers in question cannot be supplied to the Hon'ble Member, and I will take this opportunity of stating for the information of the Council that in my judgment records of the confidential deliberations of the Executive Council are not papers or returns within the meaning of Rule 13. I may add, for the information of the Hon'ble Member, that the Secretary of State was asked to agree to the publication of the Bill under Rule 23, and that his reply was in the affirmative."

The Hon'ble Sir Verney Lovett:—"My Lord, as a member of the late Rowlatt Committee, I would like to begin by thanking the Hon'ble Members of this Council who have criticised our recommendations, sometimes in unflattering terms, for the courtesy and consideration with which they have referred to our findings of fact and ourselves. I trust that in whatever I have to say I may show an equal courtesy. 11-19 A.M.

There is no need for me to justify our findings of fact. They have not been seriously impugned, and such remarks as I have to make will proceed on this basis. We each did our utmost to ascertain the real facts, and when we had found them, we considered possible legislative remedies and preventives. The Hon'ble Mr. Jinnah says that the present Bills which simply embody our recommendations are "entirely against the will of the people." Do the people really understand what the issue is and have they grasped the facts? In my opinion they have not, in spite of the earnest endeavours of the Rowlatt Committee to state the issue and to detail the facts in such a manner as to admit of no misunderstanding. I do not think that the Hon'ble Members of this Council who have spoken have grasped the real issue, but I will endeavour to make it clear, and if I succeed in doing so, I will ask Hon'ble Members to explain it to their constituents. They are here after all because they lead and not because they follow, however heavily they may be bombarded by telegrams. There is yet time for them to lead wisely. The issue to-day is this. Is the Government to take legislative measures or not to cope with blood-thirsty crime and sedition in India, and to protect from these hideous evils its subjects and loyal servants? That is the present issue. There is no other. The issue before the Rowlatt Committee were first, what do you consider to be the nature and extent of criminal conspiracies connected with the revolutionary movement? Secondly, are you able to suggest to Government new or additional laws by which such violent crimes can be prevented? I would venture to remind Hon'ble Members that the law does not cease to be the law because it is supplemented or altered in the light of bitter and tragic experience. We are told that the Rowlatt proposals outrage ordinary ideas of British fair play. We were not all British on our Committee. We had the invaluable assistance of two Indians, men of great legal experience and of sterling independence, from whom we parted with the highest respect. They are not men who enjoy newspaper abuse any more than do the Hon'ble Members of this Council. I maintain that our proposals violate neither British nor Indian ideals of fair play. I need not discuss them in detail now, as the Bill has to go to Select Committee. Our most prominent suggestions were devised to meet possibilities, possibilities ranging as we said from incipient sedition to incipient anarchy. These possibilities will not be prevented from materialising by cheerfully ignoring them. Dangers are visible. They were visible to the Rowlatt Committee, and they are visible more clearly now. They are not lessened by the triumph of blood-thirsty violence in Russia, even though that triumph be partial and temporary. We know from the foot-note to page 15 and from paragraphs 90 and 94 of the Sedition Committee's Report that Russian terrorist methods have been already carefully studied by Indian fanatics.

"But apart from such influences there are special perils waiting for impressionable young Indians. Let me read the statement of Narendra Dutta Gupta on page 193 of the Report. After confessing to the murder of a brave and loyal servant of Government he said :—

'I make this statement so as not to injure Jatin but as I have come to understand that anarchism will not benefit our country, and the leaders who are now blaming me, now thinking the deed that of a head-cracked boy, to show them that I alone am not responsible for the work. There are *many* men behind me and Jatin, but I do not wish to give their names in this statement The leaders who are now blaming me should be kind enough to come forward and guide boys like me in the good ways.'

"This statement was made some years ago, but does any reflecting reader of the Report believe that the 'leaders' who first depraved and then blamed this miserable victim have vanished from the earth? The Rowlatt Committee did not think so. And it is clear from the Home Member's speech and from a speech recently made by the Hon'ble Sir Henry Wheeler in the Bengal Legislative Council, that the Committee was right, that such men not only exist but

intend to renew their villainous work when opportunity offers. They are even now encouraged and assisted by speeches and newspaper articles instinct with bitter racialism and published broadcast which, every one knows, are only too common. Does past experience show that such speeches and articles produce no fruit? It shows the very contrary. They frequently produce fruits which astound their authors. The Hon'ble Mr. Bannerjea in advising Government to withdraw these Bills urged that they violated the principle that conciliation should precede coercion. Has it not in fact done so here? Long before these Bills were projected, before even the report of the Sedition Committee was published, the Reform proposals of your Excellency and the Secretary of State were given to the world. When these proposals were published, your Excellency and the Secretary of State had read the Report of the Committee, but were none the less determined to endeavour to meet political aspirations. Your proposals were hailed with only slightly qualified enthusiasm by that party of Moderates of which Mr. Bannerjea is the leader. The Hon'ble gentleman and others have proposed amendments asking for delay in introducing these Bills, but it is plain that their real objections are to the Bills themselves. Failing the withdrawal of these Bills for good and all they wish the Government to wait and see how the Reforms operate, how far the economic and social conditions improve, and whether the revolutionary movement claims any more victims or not. Now, it is these unfortunate victims who find no place whatever in this specious programme. Not one speaker has considered them at all; we have heard a great deal about the poor young men who may be wrongly condemned by three fallible High Court Judges and subjected to police supervision by the orders of an untrustworthy executive. But what about the persons who have to be protected from the movement of which these young men are the exponents? They too are God's creatures, and they are generally, though not always, Indians. What is to happen to them? We know from the Report what has happened to them in the past. I will give two samples. The first is from the record of the year 1915. The Report says :—

'It remains to mention three murders which occurred in Eastern Bengal this year. On the 3rd of March Babu Sarat Kumar Basu, the Head Master of the Zilla School at Comilla, was shot dead while walking with his servant. The servant was wounded in the stomach. A Muhammadan who pursued the murderers received two shots in the chest and a woman was accidentally struck by a bullet from one of the pistols. Five empty Mauser pistol cartridges were found upon the scene. The Head Master's servant eventually died. The victim of this murder had come into antagonism with political parties in Bengal in 1908, and shortly before his murder had had occasion to report to the District Magistrate about two students concerned in the distribution of seditious pamphlets. None but political reasons can be assigned for this murder.'

"The Report goes on to mention the murder of a Police Officer who was shot with his child by four or five youths armed with Mauser pistols. The second passage which I should like to quote is from the record of the year 1917 :—

'Another dacoity in 1917 remains to be specially mentioned. It was committed in a goldsmith's shop at No. 32, Armenian Street, Bura Bazar, Calcutta, at about 9 P.M. on the 7th May. Two young Bengalis entered the shop and asked to see jewellery. Then four young Bengalis entered the shop and began firing wildy with pistols. Two brothers of the owner who were in the shop fell mortally wounded. There were also in the shop an assistant and a servant, who were both wounded, two women, one of whom escaped and the other hid under a bench, and a Muhammadan who escaped. The dacoits decamped with jewellery to the value of Rs. 5,459, and some of them drove away in a taxi-cab that they had in waiting.'

"In neither of these cases was a single conviction obtained. There have been many such cases. The fate of these poor victims seems to me to deserve a little more than conventional regrets from the Members of this Council. My Lord, what has come from delaying and hesitating to grapple adequately with these evils in the past? What has resulted from the absence of laws broad enough to cope with terrorism and revolutionary conspiracy working together among a simple and heterogeneous population in an enormous country? We know from the Report what has happened. As the Committee pointed out in paragraph 174, it was only when the Bengal conspiracies had enjoyed a two years' run, when two English ladies had been murdered, and as Lord Minto said 'the seeds of wickedness had been sown among

a strangely impressionable and imitative people' that the first preventive Bill of these latter years was enacted. Enormous mischief had been done. The Government of India waited then. Again they waited, during that critical period from the 19th December 1914, when the Punjab Government asked for the very early promulgation of a draft Ordinance, in order to deal with the prosecution and suppression of violent crime, waited up to the passing of the Defence of India Act in March 1915. Would they have waited had they foreseen the long tale of intervening crime, had they known that within this period conspiracy would almost achieve widespread bloodshed at large centres from Calcutta to Lahore? Why did they wait? They waited because they were reluctant to supersede the ordinary statute law. The Rowlatt Committee did not think that they would have hesitated to employ special preventive laws had such been ready to hand. My Lord, surely the past teaches us that sacred as is the name of liberty, it should never be so interpreted as to cover license to enemies of us all, of the Government and of Society, to work out their plots as they please. I wonder if Hon'ble Members have read those words spoken on the scaffold, in a last hour of awakening, by one of the victims of the French Revolution who had assisted to raise the storm which swept her away. 'Oh, Liberty! What crimes are committed in thy name!'. This is indeed a true saying. We are told that the crimes of the Terrorists will disappear before political concessions, that they are merely the product of unsatisfied political idealism. Persons who really think this fail entirely to understand the frenzied and irreconcileable spirit which guides this insane, this inhuman war against Society. It is a spirit which, as the Report shows, burns with racial hatred and spurns political concessions. I am speaking of the spirit of the directors of the movement, men like-minded with the notorious Hardyal. The others are their tools. The criminals are comparatively few, but their facilities are great, and their organisation has been elaborate and widespread. Their achievements would, as the Report points out, have been more considerable had they been able to procure a more abundant supply of arms. Their designs have been furthered all along by the absence of anything like determined, persistent non-official opposition to their propaganda of racial hatred. I remember indeed one fine courageous speech of Mr. Gokhale's delivered to the Students' Brotherhood at Bombay on the 9th of October 1909. I commend it to all true Indian patriots. It should be graven in their minds. Had there been more of such speeches and had such speeches been followed by determined, widespread action and organisation, a number of misguided youths would have been a credit and a joy instead of a disgrace and sorrow to their parents, and there would have been no Rowlatt Committee. As it is, the attitude of too many politicians towards the Terrorist movement has resembled that of a nervous person who hearing a burglar in his bedroom feels happier and safer when he pulls up the blanket over his head. My Lord, things being as they are, and not as we all hope they will one day be, I do not see how without special legislation of the kind proposed by the Rowlatt Committee, revolutionary plotters are to slink back discouraged and loyal subjects and servants of His Majesty the King-Emperor, whose sole offence is wealth or their loyalty, are to receive from the law that protection which no self-respecting Government in the world would refuse them. The Government of India cannot sit down and twiddle its thumbs, as apparently some Hon'ble Members wish it to do, because all judges and policemen are fallible, the Executive is human and prone to err, and high provincial officials are a truculent lot. When the Congress and Moslem League deputations arrive at Bombay *en route* for England, they will not be deterred from embarking by the reflection that 'ships are but boards, sailors but men and then there is the peril of waters, winds and waves.' Perhaps these pessimistic members forget that in future far more of these frail judges and officials will be Indians than are Indians now. This reflection may reassure them. Be this as it may, Indian parents have a right to expect that Government will take as effective steps as possible to prevent revolutionary plotters from depraving and ruining their sons. There are, too, others who have the strongest claim on all of us, non-officials and officials. It is pre-eminently due to the loyal Police Officers of the Crown, British and Indian, to the loyal landlords and peasant proprietors of the Punjab, that India was not disgraced

in the first year of the war, despite the valour of her soldiers and her own general loyalty. They frustrated the plots of the revolutionaries ; they stood in the van ; they bore the brunt. Should the Government of India fail now to do its utmost to shield the homes of its loyal Indian servants from cruel bereavement, would its own roof-tree stand the firmer ? It would not. It would gradually totter to well-deserved catastrophe.

" My Lord, I appeal to our non-official colleagues to look at facts that stare us in the face. It is only by recognising existing facts that we can hope to build truly now. As Mr. Gokhale once said 'Life is not like writing on a clean slate. We have to take the words existing on the slate, and add other words, so as to make complete sentences and produce a harmonious whole.' We must, my Lord, take things as they are, build on what is sound and right, remedy what is horribly wrong if we would indeed rise to higher things and realise the future which your Excellency has so earnestly sought, with infinite labour, for the people of this country."

11-42 A.M. **The Hon'ble Dr. Tej Bahadur Sapru:**—"My Lord, in introducing this Bill yesterday the Hon'ble the Home Member assured us that it was in no light-hearted spirit but after very careful and anxious consideration that the Government had decided to take this step. My Lord, may I similarly, on my behalf and on behalf of many of my Indian colleagues, venture to say that it is in no light-hearted spirit but after very careful and anxious consideration, and after very close study of the provisions of this Bill, that we have come to the conclusion that it is our duty to oppose this Bill. My Lord, it is a duty that we owe to ourselves, it is a duty that we owe to our countrymen, it is a duty that we owe to you and to the Government, that we should frankly and without equivocation tell you what we feel about this Bill. My Lord, I think no Indian who is worth his salt in this Council would be true either to his own convictions or to the Government if he were to equivocate on an occasion like this. My Lord, the path of duty being clear, I have decided that I must oppose this Bill and support the motion which has been put before this Council by my Hon'ble colleague, Mr. Patel.

"My Lord, there is one other matter to which I wish to refer at this moment. The Hon'ble Sir William Vincent also reminded us yesterday that our critics in England and our critics in India would judge of us by the attitude that we adopt towards this measure. In other words, the position that is placed before us is this. If we want to establish our capacity for self-government, or responsible government, we must be prepared to support the Government in carrying this measure through. My Lord, if an argument like this did not proceed from the high quarter from which it did, I should not have been disposed to attach much weight to it. We have been hearing this argument for the last several months. We have been reading arguments of that character in various newspapers in India and also in England for some time. But, my Lord, let us examine the position carefully and dispassionately. If we do not support this measure, we are not fit for responsible government or self-government. If we do support this measure we are again not fit for responsible government, because admittedly the country is seething with discontent and anarchy, and where there is anarchy there cannot be self-government or responsible government. My Lord, I frankly confess that whatever other important issues may be raised with regard to the reforms, I think an issue of this character is absolutely a false issue. I do not think that it is the pivot on which the question of reforms turns. My Lord, may I, in all humility, ask our critics to tell us on some authority whether, if we were prepared to support this measure to-day whole-heartedly, they would be prepared to give up all their opposition to our claim for self-government and say 'Oh, well, Indians have now established to the hilt their fitness for self-government.' My Lord, the resources of our critics are inexhaustible, and if an argument like that will fail them I have no doubt that we shall be face to face with a multitude of arguments of a different character to show that we have the yet developed character and capacity for self-government. Therefore, my conspi whatever else you may do, I will beg of you, and I will earnestly entreat dered, an to confuse this issue which we have to consider this morning with of the reforms.

"My Lord, my Hon'ble colleague Sir Verney Lovett in his very spirited speech just now told us that we had absolutely missed the issue, and as he formulated the issue it was like this. Are the Members prepared to realise whether, under the circumstances which exist at the present moment and under the circumstances which had existed during the last few years, the Government is or is not justified in taking large legal powers to cope with the situation. My Lord, I may assure Sir Verney Lovett that we have not missed the issue. We realise that issue. We are fully aware of the issue that has been present in the country, but the real issue now to-day before us is not whether the Government should not assume new legal powers to cope with the situation, but whether this Bill is really the sort of Bill which the Government should put before the country, and whether the powers which Government want to cope with the situation are precisely the powers which they should take under this Bill.

"My Lord, the Indian politician is somewhat of an unfortunate being. His attitude is seldom correctly appreciated. Indeed, it is far oftener the case that his attitude is misunderstood than appreciated. Throughout the discussion it has been assumed that those of us who are not prepared to support the Government on this occasion have got a soft corner in their hearts for the anarchist or the revolutionary. But let me assure you, my Lord, that that is not so. No one regrets more than the Indian politician or the Indian reformer does that there should have sprung up in this country a breed of that type. But, my Lord, what the Indian politician wants to know is this. Are the measures that you have been taking, is the measure that you propose to take to-day, the sort of step that is necessary, that is essential, for the uprooting of this evil which has grown in this country? My Lord, I have no doubt whatsoever in thinking that these are not the measures which will undo the mischief that has come about in this country or that will uproot the evil that has grown. You have tried repression during the last ten years on various occasions, and yet you find to-day that you are not in a position to say that you have been able to quell or suppress all these activities, and I venture to think, my Lord, that even this measure will fail.

"And I venture to think, my Lord, that this measure will fail. Now, my Lord, I oppose this Bill on many grounds. In the first place, I have no hesitation in saying that it is wholly wrong in principle, unsound in its conception, dangerous in its operation and too sweeping and too comprehensive, indeed far more comprehensive than many of us are prepared to admit at the present moment. In the next place, my Lord, the Bill which is now before us is sought to be placed permanently on the Statute-book, and I say that is not the right thing to do. In the last place, my Lord, I say that this is not the time to introduce a measure of this character. I will take up the question of principle first. My Lord in Part I of this Bill what do we find? You seek to create a new Court. Now I do not for a moment say that you cannot create a new Court. Perhaps that point is no longer open to me to urge, having regard to the recent decision of a High Court in India, but what I do say is, that it should be clearly recognised and realised that you are not conferring a special jurisdiction on the High Court, you are creating an altogether new jurisdiction with a new procedure for admitting evidence and for the examination of the accused. Now, my Lord, it may be that the Court which you are creating, consisting, as it will be, of men who have been, or who are, judges of the High Court is in some respects better than the special tribunals to which we have been accustomed during the last few years. I submit that the other provisions in this part are open to serious objection. I do not propose to go into those objections at this moment, as I have no doubt that the Members of the Select Committee will take care to press their point of view in the Select Committee. It is only when we come to Parts II and III that we have some idea of the dangerous character of this measure. In fact, if we examine Part II what do we find? Section 20 says:—

'If the Governor General in Council is satisfied that movements which are, in his opinion, likely to lead to the commission of offences against the State are being extensively promoted in the whole or any part of British India, he may, by notification in the Gazette of India, make a declaration to that effect, and thereupon the provisions of this Part shall come into force in the area specified in the notification.'

"Well, what is exactly the meaning of that expression 'movements' I am not in a position to say. It is not a word of art, it is not a word of law, and as that word stands, it may cover any movement, political, social, or economic, in this country. My Lord, the Governor General in Council having declared a movement to be dangerous, disappears from the scene, and the rest of the powers are exercised by whom? By the Local Government. And what does the Local Government do after that? The Local Government may pass any one of those orders which are specified in Section 21. It may pass an order that a person—

(*a*) shall, within such period as may be specified in the order, execute a bond with or without sureties to be of good behaviour for such period not exceeding one year as may be so specified;

(*b*) shall notify his residence and any change of residence to such authority as may be so specified;

(*c*) shall remain or reside in any area in British India so specified; provided that, if the area so specified is outside the province, the concurrence of the Local Government of that area to the making of the order shall first have been obtained;

(*d*) shall abstain from any act so specified which, in the opinion of the Local Government, is calculated to disturb the public peace or is prejudicial to the public safety; and

(*e*) shall report himself to the police at such periods as may be so specified.

"Now, my Lord, the Local Government having done this, there appears on the scene certain gentlemen who have been dignified with the name of investigating authority under this Statute. These gentlemen must carry on their inquiry *in camera*, within closed doors, with the accused before them, but with no right to the accused to have the benefit of legal advice or legal support. Having finished his work, these gentlemen must submit their report again to the Local Government, and it will be then for the Local Government to decide what order it shall pass consistently with the provisions of section 21. My Lord, when you come to examine Part III, which was admitted to be much more drastic than Part II, inasmuch as under that Part the Local Government may cause any person to be arrested or to be put in confinement and order an investigation to be made in a similar fashion, you realise how very dangerous it is. My Lord, if it is not undiluted coercion, I ask what is it in all humility? If it is not substituting executive discretion, or may I say indiscretion, for judicial process or judicial form of law, what is it I ask? My Lord, I submit that the entire provisions in Parts II and III are so subversive of elementary principles of British jurisprudence, they are so shockingly unlike anything known to British institutions or British law, that I venture to hope that the Statute-book will not find a standing place for this uncanny intruder. My Lord, the homage that is sought to be paid to law in the constitution of this investigating authority is in my opinion nothing but a mockery. Either you must abide by the law inherited by us through ages, or you must frankly say 'we do not care for these judicial forms and we will frankly reserve this power to the executive, and do not care that there shall not be any further inquiry.' Well, if it is supposed that this inquiry by the investigating authority will lead to any satisfaction, I venture to dispel the illusion. I say that an inquiry by the investigating authority under the limitations proposed will not bring satisfaction to popular mind. My Lord, therefore as a lawyer trained in the British system of jurisprudence, as an Indian who loves his country and who is interested in the ordered progress of this country, who wants self-government, who is anxious to have responsible government, at an early date, and who is anxious for the permanent connection between India and England, my Lord, I think it is my duty to oppose this measure. My Lord, I also said that it was an ill-timed measure. My Lord, during the last few months I have been going all over the country with the Reforms Committee, and what has been my experience? My experience has been that the feeling for the proper reception of reform is fast growing in the country. It was growing

until day before yesterday, and I venture to think that if nothing untoward happens, it will grow in strength and force very soon. I think, my Lord, it is very unfortunate that a measure like this should have been conceived at this juncture, and it is much more unfortunate that it should have been introduced in the Council at the present moment. My Lord, already unkindly critics of the Government are saying in every part of the country—'well, reforms may come or may not come, goodness only knows whether they will come or when they will come or how they will come, but meanwhile undiluted and pure repression is coming.' My Lord, as one who is deeply interested in the reforms, who realises the difficulty of evolving any scheme of reforms, having worked on that Committee, and who is anxious to have those reforms, who thoroughly appreciates the honesty of purpose of your Lordship and Mr. Montagu in regard to reforms, I think it is my duty to raise my humble voice against this measure on this occasion. I will beg of you and entreat you with all the earnestness that I can command to consider whether you will not be immensely gaining in moral strength and prestige by dropping, or even postponing, a measure of this character.

"My Lord, I have not the smallest possible doubt that if you do listen to those who are earnestly pressing this request upon you on this occasion, you will not regret it. On the contrary, you will find that you will have strengthened your position beyond all measure and that, when any untoward situation arises afterwards and you come before this Council or its successor and say 'here is a dangerous situation', I have not the smallest possible doubt that every one of us, if he happens to be here then, will rally round you and try to do everything to strengthen the hands of Government to meet the situation. My Lord, let it not be said that Indian Members fight shy of responsibility, or let it not be said that they are so meek and so timid that they cannot resist public criticism. My Lord, the history of this Council bears witness to the opposite view. Was it not the Indian Members who supported Government in passing the Indian Press Act? Was it not the Indian Members who unanimously supported Government in passing the Defence of India Act? I can give many more instances, my Lord. There have been men among us who have deliberately courted unpopularity, men among our countrymen who have shown that they can stand public criticism when it is a matter of conviction that they should take one line of action rather than another. Therefore, my Lord, if criticism of this nature is levelled against us, I for my part am not disposed to attach any importance to it. My Lord, I will again repeat that this is not the time to go on with a measure like this. I do not say that that is the sole ground on which I oppose it. I oppose it, first and foremost, on the ground that the whole measure is wrong and unsound in its principle. But even if I am wrong there, I will beg you, my Lord, to take into consideration the question of expediency.

"And lastly, my Lord, there is one more point which I would urge upon your Lordship's attention and upon the attention of your Government. I do so not without hesitation, but I do so in the hope that perhaps your legal advisers may throw some light upon that question. My Lord, if there is one principle which is embedded in the British constitution and in the British law it is that no man shall be deprived of his liberty and freedom, without a proper judicial trial. My Lord, I venture to doubt—and my doubts are serious—whether the Government of India have got the power to pass a measure of this character. My Lord, I will refer to section 65 of the Government of India Act, which says that 'the Governor General in Legislative Council has not, unless expressly so authorised by Act of Parliament, power to make any law repealing or affecting any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom'.

"My Lord, the bond of allegiance, the strongest bond of allegiance between the subject and the Crown, is that the Crown protects him against arbitrary executive power and that the subject is entitled, before he is deprived of his liberty and of his freedom, to be tried according to the recognised forms of law. My Lord, I have no doubt that your Government have satisfied themselves that they have such power; but, speaking for myself, I am not free from doubt

on that matter, and I should very much welcome any explanation on that point of law.

"Lastly, my Lord, I will beg you to realise the situation as it has been growing during the last few days and as it threatens to grow in future. My Lord, already there is a wave of indignation running through the country; from one end to the other protest meetings are being held. Do not dismiss them with a wave of the hand and say, 'Oh! well, all this will pass away'. My Lord, what was impossible in this country ten years back is no longer impossible now. Political feeling has been growing in this country; political consciousness is much stronger to-day than it was ten years ago, and what the country was prepared to put up with ten years ago it is not prepared to put up with now. As one who does not want this country to be thrown into a vortex of agitation, who is deeply anxious that our programme of work in the future should be constructive rather than destructive, who wants that we should not dissipate our energies in mere protests, I feel, my Lord, that you are going to throw the country into a whirlpool of agitation such as it has never witnessed before. My Lord, that will be prejudicing the Reforms, and I am interested in the Reforms. I beg of you, and I entreat you, to give the Reforms a fair chance and do not prejudice them before they have come into force. Give them a fair chance, and then you will find that you will not have taken a wrong step, a mistaken step, in having listened to your advisers to-day in this Council.

"I would therefore strongly oppose this Bill and support Mr. Patel's motion".

12-7 P.M. **The Hon'ble Mr. G. S. Khaparde**:—"My Lord, it is said that every rose has its thorn or that there is no rose without a thorn. Our rose is this Reform Scheme. We have seen it blossom in the air to a certain extent; we have smelt its fragrance; but the unfortunate part of it is that the thorn has begun to prick earlier than was expected, and that is where the trouble of the situation is.

"I will preface my remarks by reading out one sentence from Lord Morley's 'Recollections'. I have copied it out. Here it is: 'Shortcomings of Government lead to outbreaks; outbreaks have to be put down; reformers have to bear the blame and their reforms are scotched. Reaction triumphs, and mischief goes on as before, only worse'. Lord Morley is a great philosopher and a great writer, but it appears to me as if he has produced an aphorism which ranks very high in political life, and deserves to be embodied in a work higher than mere recollections. It happens, as it happened, that there were certain shortcomings which fostered this anarchical spirit in Bengal. Unfortunately, the Rowlatt Committee takes no notice of these shortcomings. Outbreaks have to be put down, I thoroughly agree, no matter what the shortcomings have been. When they are put down, what unfortunately happens is what has actually happened, namely, that the reformers have to bear the blame. Here it has not been made as an allegation, certainly not as an accusation. Nobody has said so much, but there is something in the air, an airy nothing, which implies that people who oppose these measures are people who in their heart of hearts sympathise with the anarchists. This part of the suggestion if I may call it so—it is not even so clear as to call it a suggestion—well, this suggestion or implication or whatever it may be called, I humbly submit is not right, and as Lord Morley foresaw we have got to bear the blame, though really we have absolutely nothing to do with the anarchists. We do not sympathise with them; we would much rather suppress them altogether if we could. But the blame still comes to us. It would not much matter if we had to bear the blame alone and that was all. What becomes worse is that our proposals get scotched and the reforms we propose get to be viewed with some amount of suspicion, and what little is given is diluted a great deal, so as not to be effective.

"'Reaction triumphs and mischief goes on'. This last portion it is which I wish to dwell upon to a certain extent. The Rowlatt Committee in their report did not notice any of the shortcomings, nor suggest any remedies: all that they are concerned with is to propose measures to suppress them, and

in the carrying out of those measures reaction triumphs. To that part of the case, therefore, I wish to address myself. This is not the first time that I speak on this subject. This Hon'ble Council may remember that last year in Simla I brought in a motion asking that all action on this report should be kept in abeyance pending certain inquiries. Speaking on that occasion I dwelt on the *ex parte* character of the inquiry. I dwelt upon its being *in camera*. I also dwelt upon all the numerous defects and omissions that I had found in the report, omissions in the face of which it was impossible for us to form an opinion. To-day I propose to raise a question which has already been raised and argued first by my Hon'ble friend Mr. Chanda and then by my Hon'ble friend Dr. Sapru. That question is, whether it is within the competence of this Hon'ble Council to pass this Bill as it is put before us here. Have we got any jurisdiction in a matter of this kind? Our opinion is that we have not. It was mentioned yesterday by the Hon'ble the Law Member that no serious argument had been brought forward on this point, and that so far as he was concerned he was satisfied that there is not the least objection. I shall endeavour to indicate the serious part of the argument that bears on this matter. Section 28 of the Indian Councils Act of 1861 has this paragraph:—

'Provided that the Governor General in Council (unless expressly authorised to do so by Parliament) shall not have the power of making any laws which may affect the authority of Parliament . . . or any part of the unwritten law or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom.'

"This provision has since that time been reproduced in every Act and also finds its place in the present Bill. I think the Hon'ble Dr. Sapru read it out just now. Now, what is meant by 'allegiance' here? Blackstone defines it as follows:—

'Allegiance is the tie which binds the subject to the Crown in return for that protection which the Crown affords to the subject.'

That is the definition given by one who is, I suppose, one of the greatest of English lawyers. Does this Bill affect questions of allegiance? Does it do so at all, and if it does, is this Hon'ble Council competent to make an enactment of this kind? That is the next question that arises to my mind. I submit that it does and there are some points to which I wish to draw special attention. One is the English law that nobody's property or liberty can be taken away without a proper judicial sentence. In this particular instance, that principle of English law is sought to be detracted from and in certain matters the executive authority will be able to deprive a person of his liberty and his property. This, I say, is rather a bold departure because in English law there is no counterpart to it. Even when they were enacting the Defence of the Realm Act, they provided:—

'Where a person, being a British subject but not being a person subject to the Naval Discipline Act or to Military Law, is alleged to be guilty of an offence against any regulations made under the Defence of the Realm Consolidation Act, 1914, he shall be entitled, within six clear days from the time when the general nature of the charge is communicated to him, to claim to be tried by a civil court with a jury . . .'

"Your Excellency will see then that in the Defence of the Realm Act, which was enacted in England, and on the model of which, I presume, our own Defence of India Act was framed, a person against whom a notice was issued could claim a trial by jury. Now England in those days was in a peculiar position, it being nearer to Germany, many German spies were found there and other people who went there to give trouble and raise all kinds of difficulties. Even then, with all those difficulties to face, English law did not depart from its principle of saying that any person who is to be prosecuted can always claim a trial by jury. Whereas here, fortunately for us, being at a distance from the scene of the war, there were not so many spies, or if there were, they were probably taken hold of and all the Germans were interned at Ahmednagar and other places. There was no necessity to constitute this new kind of tribunal, which was unknown up to this time. To this a great deal of objection has been taken both in legal circles as well as in political circles. I am at present speaking of political circles only, but Sir John Simon, who is, I believe, a well-known authority on constitutional matters and a great lawyer practising in England, presented a petition to the King and asked

His Majesty to transfer it to the Privy Council. From that petition I propose to read out to your Excellency the following passage :—

'Invasion by the Crown of the constitutional rights and liberties of the subject affects allegiance fundamentally. Also the authority of Parliament is seriously invaded. The constitutional rights of the subject stand upon the authority of Parliament and the Coronation Oath. No legislature of a dependency possesses the right to infringe these rights in the name of the King's Government, whether supreme or local, without the express authority of the King in his Parliament. The Governor General in Council of India has not received any express authority by Act of Parliament to pass the Defence of India (Criminal Law Amendment) Act, 1915 The said rules purport to confer powers on Local Governments arbitrarily to invade or destroy, without limitation in degree or time, such rights and liberties as (1) the right of free action and conduct (so far as not prohibited by Municipal Law); (2) freedom to come and go throughout the Realm ; (3) the right of free speech and publication ; and (4) the enjoyment of property. Even if not so restrained by the Acts mentioned, the Governor General in Council appears to have no power of Common Law to interfere with these rights, at all events in the case of British subjects, who by virtue of citizenship retain these liberties wherever they may go within the British Dominions.'

The Hon'ble Sir George Lowndes :—"Would the Hon'ble Member allow me to see this very interesting document, and does he know what the result of the application to the Privy Council was ? "

The Hon'ble Mr. G. S. Khaparde :—"I do not know, but I know it was after the presentation of this petition that Mrs. Besant was released. Then, on her release another petition, very nearly in the same words, was also presented."

The Hon'ble Sir George Lowndes :—"Am I not right in saying that their Lordships of the Privy Council rejected this petition ? "

The Hon'ble Mr. G. S. Khaparde :—"No, I have not heard of it. This petition, I believe, is still pending ; that is my idea about it."

The Hon'ble Sir George Lowndes :—"The original petition, I believe, was rejected."

The Hon'ble Mr. G. S. Khaparde :—"Because she was released."

The Hon'ble Sir George Lowndes :—"Not because she was released. The Privy Council refused to entertain the application, that is, the one from which the Hon'ble Member is reading."

The Hon'ble Mr. G. S. Khaparde :—"It may be that I am wrong ; it may be so, but still the point remains that these arguments are undisposed of. These arguments still remain and there was a commission appointed presided over by Lord Loreburn before whom Sir Courtenay Ilbert was examined and he gave a list of fifteen enactments which according to him were not really speaking authorised by law, that is to say, fifteen *ultra vires* enactments ; but that list unfortunately was said to be confidential ; I tried to get it but I could not get hold of it and it still stands ; among them, however, it has come out that the Defence of India Act stood first. Your Excellency may remember that there was a case recently in Burma in which this point was raised ; the enactment said that no person will be allowed to bring a civil suit for anything done *bonâ fide* under the Act, as it is said also under this Bill. Then the person did bring a suit and it was rejected and he appealed to the Privy Council and the Privy Council allowed that appeal, and they were inclined to hold that the Government of India, this Hon'ble Council, could not pass a law taking away a subject's right to sue the Secretary of State. It comes to this, that this point is still open and has been argued and in the Burma case at any rate it has been so ruled. That being so, I humbly submit that this legislation is, so far as I can see, with due respect to the eminent jurist, the Law Member, who sits opposite to me, with due respect to him, I still believe that this argument is correct and when I read this passage I read it merely to give the authority of Sir John Simon. The practical part, however, is that the enactments are there and I go upon those enactments.

"The next point which is of importance in this case is that which prohibits all revision. Such a law is repugnant to the British constitution. The House of Lords is the highest Court of justice and to that Court every order passed should be taken. The Privy Council is not really a Court established by any law, but independent of those Courts it has grown up, and as I will show, nobody has disputed its authority, but the fact still remains that the House of Lords is the highest Court for the whole of the British Empire, and I believe one of these days this matter will be taken to the House of Lords and it will be argued there. So, if what I say is true and has got any force, then it follows that this enactment may have to be tested and may be taken by somebody who has the ability, the capability and the money to spend on it before the House of Lords, as to whether it is within the competence of this Hon'ble Council to pass this law. Taking it that we are, as a matter of legal argument, I still submit that it is not within the jurisdiction of this Council. For the sake of argument assume that it is within the jurisdiction of this Council, what is the result? The first question has been raised and argued at great length and with great ability in this Council that it would be inexpedient. It has been also argued that it would affect the reception that the people are willing to accord to the Reform proposals put forward by your Excellency and the Secretary of State. I put forward a third ground to show the inexpediency of it. It is like the old story; a traveller had gone to sleep under a tree and the sun's rays were falling upon his face. A swan was passing and (swans are generally spoken of as good) he saw this and spread his wings to throw shade on the face of the traveller to protect him from the rays of the sun and make him sleep better; in the meantime a squirrel ran across and disturbed his sleep, and the traveller got up and he believed that it was the swan which did the mischief and shot the swan. It comes to be like this here. We have been endeavouring, everybody in this Council has been endeavouring to facilitate the passage of these reforms; we have been endeavouring to speak about them and to discuss them and to bring them home to the people and so on; but there may be,—who knows what squirrels may come in and what trouble may arise?—but anyhow these Bills are to be directed against us here. In fact it was said in this Council that the way in which we dealt with these Bills will or will not facilitate the reforms or something to that effect, I do not quote the exact words, but that the debate on these Bills will have an effect on the reforms. I humbly submit that the two things stand quite apart. It is a question of expediency as it is put forward now. Your Excellency may remember that I ventured to doubt the conclusions of fact as arrived at by the Rowlatt Committee in my speech at Simla. I was taken to task for it and everybody spoke against me, but I am a little bit obstinate in that respect, and I do still adhere to that, because the whole evidence is not before me, and not being before me I am not in a position to say that the conclusions arrived at are correct. But I am willing to argue on the basis of those conclusions being correct. Taking it for the sake of argument that those conclusions were correct, even then I submit those conclusions do not justify the kind of Bill that has been brought before us now. I gave my reasons then and I do not propose to repeat what I said before, but I really wish to draw your Excellency's attention to this part of the case; to-day also an Hon'ble gentleman read out to us some passages which, I believe, are already printed in the book from the statements of persons examined then and which are quoted there. Again, the old difficulty comes back to me, that we are not in a position to read the whole of the evidence and quote passages which could refute those passages. We are only given one passage and not the whole of it, and therefore we cannot quote from the other parts of it, if there are any other parts at all, in which that conclusion can be disputed. We should have the whole of it to see if there are any portions which contradict this portion. Even taking these conclusions to be correct, what does it mean? It means at the most, not that new powers are required, nor that a new procedure is required; it does not mean that anything new is to be done. The old Act is quite enough; the only difficulty, as was pointed out yesterday, was that there was not sufficient evidence. Now, whose business is it to collect that evidence? I believe it is the business of the police or the Criminal Intelligence Department. Why don't they do it? Well, it is said, they are unable to do it. I say that points to the inefficiency of the police; it does not point to the

inefficiency or defect of the law; it points to nothing else. Why not ask them to do their work properly? They say they cannot do it. Why can't they? In England they do it; they do not require these laws in England to unearth these conspiracies; they do not require these very unusual laws. Why do they want these laws here to unearth them? It is like the analogy which was put by an Hon'ble Member here 'Lower the standard of the examination because my son cannot pass now.' 'My police cannot collect evidence; kindly make the law more rigorous and relax the rules of evidence.' That is not the kind of argument that appeals to me, and I believe it will not appeal to anybody here.

"In support of this ground of inexpediency, I take the opportunity to say that I have got, since coming to Delhi, nearly 29 telegrams and letters; most of the telegrams (I hold all of them in my hand) ask me to oppose this Bill; 16 of them are from my constituency and they ask me to oppose the Bill as strongly as I possibly can. I have prepared a kind of analysis of these, because it would take a great deal of time if I read them through as they generally repeat the same thing. In my constituency there are 17 places which have sent telegrams to me, they are from Amraoti, Nagpore, Chhindwara, Wanasta, Mehekar, Wani, Chanda, Elichpur, Raipur, Wardha, Khandwa, Pusad, Yeotmal, Warora. So many places have asked me to oppose this Bill and they put forward the same ground. There are others Hyderabad in Sind, Bombay, Malgaon, Saharanpore, and there is one from Delhi itself and so on. Your Excellency will see how widespread is the feeling that these Bills, if allowed to pass into law, would seriously curtail the liberty of the people. Then there is another point; it is a little secret and it is this, we believe that if these Bills are passed they will prevent political discussions being held in India. I remember the time when the *Swadeshi* movement came up people who spoke about it were taken up; then I also remember that at the time when to speak of home-rule was looked on as seditious. This spirit gradually disappeared, but people have been taken up for it. There is fear in putting these large powers in the hands of the Local Governments and that speaking on politics will be looked upon as seditious. These reforms do require that we should speak to the people about them and the changes to be introduced. But it is feared that speaking on politics will become a little difficult. I remember a case where it was said 'you have no representation, you have no business to talk on these subjects, why do you do so? What right have you to talk?' I say the highest right, because we have not got it. We have a feeling that this Bill if passed will make discussions on political subjects difficult, if not impossible. Then I doubt the wisdom of the course. We want to make friends, we don't want to quarrel, we don't want to rake up old scores or to open old wounds; we want to forget all about it and to begin afresh. It is no use saying 'this was done, and that was done therefore you are unfit.' Why keep old wounds open, the proper thing to do is to forget all about this, and that is what we intend to do. I myself think it is beyond the jurisdiction of this Hon'ble Council, I say it is inexpedient and unwise, because it is to keep old grievances alive, it will cause a breach. I wish I could find the correct English word, there is not exactly a want of confidence, not absolutely a desire to confide entirely, it is somewhere between a want of confidence and a desire to confide. That feeling if allowed to continue, will spread, it does not now exist but it may have a tendency to spread. It would be very unfortunate if that happened. Apart from this there are numerous objections which I do not like to go into as they were dealt with in more or less detail by Mr. Malaviya. A living body does not tolerate a foreign substance and so Jurisprudence does not tolerate a wrong principle being introduced. A living body will throw off any outside matter, so Jurisprudence will not tolerate this principle of the personal liberty being placed at the mercy of the Executive and being taken out of the jurisdiction of the Courts. This tendency of the principle of liberty being curbed by the executive authority would lead to a number of principles being violated as was pointed out by Mr. Malaviya. Similarly, many difficulties will arise. We should stick to the good old principles which have endured for centuries, or we will go back to the old principle of personal rule, the pernicious tendency of bringing back the people to the era of personal rule. I don't think that is the tendency of the modern age, the tendency of the

modern age runs counter to this kind of legislation. These are the days of democracy, people do not want that things should be decided by a Court sitting *in camera*, that is looked upon with a certain amount of disfavour by people. These provisions of the law run contrary to the tendency of the age. Your Excellency, for the reasons that have been advanced, I ask you not to permit this Bill to be passed into law; if it is, it will be a great misfortune and there will be a great deal of trouble. I therefore oppose the Bill and support the amendment that has been moved by my Hon'ble friend Mr. Patel."

The Hon'ble Sir Gangadhar Chitnavis:—"My Lord, I beg to associate myself with the views expressed by the Hon'ble Surendra Nath Banerjea yesterday that this legislation is rather inopportune at the present time. I do not agree with some of my friends who think that there can be no difference between political offences against the State and offences against the individual. There is a great deal of material difference, and these several offences have to be dealt with according to their relative importance, and the Government and the Council will be failing in their duty both to God and man if they do not do so when the occasion requires. As regards these Bills, there is a general consensus of opinion in the country that these Bills cast an unmerited slur on Provinces where no such anarchical or revolutionary tendencies prevailed as have led to their introduction. The public think that it would have been more appropriate if, in the first instance, this legislation had been introduced in places where Government were confronted largely with these evils. They think that it is not right to have on the Indian Statute-book any legislation of such a general character at a time, especially at a time when people eagerly look up to the peaceful results of the war and when there is a general desire among the public as loyally to co-operate in the new political development which the pronouncement of August 1917 and the subsequent reports are going to inaugurate, as they did during the continuance of the war to bring that war to a successful termination. 12-40 P.M.

"Even in the provinces where such anarchical and revolutionary tendencies prevailed, we now know from statements made in leading journals and by responsible representative men that the opinion of the minority which unfortunately indulged in such vagaries and unlawful and criminal acts is, thanks to the efforts of the Criminal Investigation Department, veering round to the side of moderation and to the support of law and order. If the Government cannot take such men on trust, whom else can they? these are the men who are to be responsible for the future administration of the country and they ought to be trusted in the statements they make. If such is the case there should be no necessity of such great hurry to introduce a general legislation for the whole country, especially when Government has in its hands the necessary power given it by the Defence of India Act and otherwise to regulate and put down any such evil wherever rampant. This legislation has undoubtedly roused passions in the country, not calculated to give this measure of such great importance that calm consideration which is necessary to solve such intricate problems. It would be appropriate if time were allowed to let these passions subside or die out and the smoke to settle by giving time for a reasonable and sober consideration of the advantages and disadvantages involved therein. This can best be done by the amendment now proposed, and I therefore give it my humble support."

The Hon'ble Khan Bahadur Mian Muhammad Shafi:— 12-43 P.M.
"My Lord, having given to the complicated problem now before the Council my most anxious and careful consideration and having weighed the *pros* and *cons* of this difficult question from every point of view, I am convinced, not that the introduction of such a measure as this would not be justifiable under any circumstances, but that the enactment of the proposed law at this juncture is unnecessary and inopportune. The proposal embodied in the amendment proposed by my friend the Hon'ble Mr. Banerjea furnishes what, in my judgment, is the best solution of the difficult problem which the Government and the country have to face, and I venture to add my humble voice to the earnest and eloquent appeal addressed by my Hon'ble friend to your Excellency's Government for the adoption of a course which is calculated to bring

about the desired result without creating widespread nervousness and unnecessary irritation. My Lord, I for one gladly and willingly recognise that in placing this Bill upon the legislative anvil, your Excellency's Government have, in absolute good faith, been influenced to adopt the recommendations of the Rowlatt Committee. I further recognise that in view of the constitution of that Committee, its findings of fact must be accepted without any challenge. And I am sure that the Hon'ble the Home Member needs no assurance from me that, were I convinced of the necessity of the immediate enactment of this law, nothing would deter me from giving him my whole-hearted support. But, my Lord, I cannot help thinking that in arriving at their decision, your Excellency's Government have overlooked a most important part of the Rowlatt Committee's Report. Hon'ble Members are aware that the first 16 Chapters of that Report contain a review of the origin and development of revolutionary movement in India, a description of some of the more serious crimes and dacoities that have been committed from time to time by its members, in some parts of the country, and a brief sketch of the measures adopted by Government in order to put down that movement. It is in the last, that is to say, the 17th Chapter of their Report, that the members of that Committee describe the legislation which they propose, should occasion arise hereafter. To what I consider is the preamble of the proposals in the 17th Chapter, I would invite the earnest and careful attention of this Council. This is what they say in the first two paragraphs of that Chapter :—

'The last part of our task is to advise as to the legislation, if any, mark the use of the expression 'if any' necessary to enable Government to deal effectively with the difficulties that have arisen in ealing with conspiracies.

'This as expressed appears to us to be applicable to the state of circumstances under which the difficulties referred to were encountered. These difficulties have, however, been circumvented for the time being by special temporary legislation and they have not been in operation at the time of our inquiry.'

I earnestly invite the attention of your Excellency's Government to this sentence—

'When this legislation lapses, circumstances may have altered and the position may be better or worse. We do not think it is for us to speculate nicely on these matters. We must of course keep in view that the present war will have come to an end, but we cannot say with what result or with what ulterior consequential effects or possibilities of consequential effects upon the situation. On the other hand, the persons interned under the Defence of India Act will be due for release and the terms of imprisonment of many dangerous convicts will be coming to an end. Further, there will, especially in the Punjab, be a large number of disbanded soldiers, among whom it may be possible to stir up discontent. Nevertheless, if we thought it clear that the measures taken against the revolutionary movement under the Defence of India Act had so broken it that the possibility of the conspiracies being revived could be safely disregarded, we should say so. That is not our view and it is on this footing that we report.'

"Now, my Lord, a careful analysis of the two paragraphs to which I have invited the Council's attention will, I feel sure, convince all Hon'ble Members that what the Rowlatt Committee say in these two paragraphs amounts to this. The revolutionary movement came into being under certain circumstances which are connected with certain years in the past. Certain measures which have been taken since the outbreak of the war have resulted in putting an end, for the time being, to the crimes and outrages committed previously. It may be that hereafter when conditions which existed previous to the war are restored, there may be a recrudescence of these outrages and crimes. We are not in a position to say anything one way or the other. But we are not in possession of evidence showing that the revolutionary movement has been absolutely extinguished, and it is on that supposition that we report to the Government what we think ought to be done in case there is evidence of a recrudescence of these crimes. Looking at these passages as a lawyer, it seems to me that their conclusion amounts to this, that should the time be reached when special legislation such as adopted during the course of the war which has resulted in putting an end to these outrages and crimes for the time being becomes necessary, we recommend the following measures which we suggest should be adopted. Now, my Lord, these paragraphs were written very nearly one year ago. Since then India's steadfast loyalty to the British Crown, her deep-rooted attachment to the British Empire, has been vindicated in a manner beyond all

praise. No outrages or crimes of the kind with which the Rowlatt Committee dealt in their report have occurred during this one year. And when we bear in mind the fact that even the very introduction of these Bills into this Council has created an amount of nervousness, alarm and agitation in the country which is evidenced by meetings that are being held all over the country, it seems to me, my Lord, that I should be failing in the duty which I, as a nominated Member, owe to your Excellency's Government if I were not, under these circumstances, to give what I believe to be true and faithful advice to your Excellency's Government. And my advice is this, adopt the course suggested to you by my friend the Hon'ble Mr. Surendra Nath Banerjea. What does that course amount to? It amounts to this, that the Select Committee shall report to this Council six weeks after the passing of the Reforms Act in Parliament, on the Bills which have been introduced in Council to-day. If by that time there is any evidence of the recrudescence of these crimes and outrages, of the existence of this revolutionary movement in India, no one will support the Government more strongly than I. And I am perfectly certain that at least a majority of the Hon'ble Members of this Council will then, because of the existence of this nefarious movement, give their whole-hearted support to Government in any measure, to these very Bills, if necessary, which may be required to meet the new situation.

"With these few words, my Lord, I give my cordial support to the amendment proposed by Mr. Surendra Nath Banerjea."

The Hon'ble Raja of Mahmudabad:—"My Lord, having some little property to look after, I think I can claim to value law and order. I assure you, my Lord, that I will vote for the enforcement of martial law if I think it is necessary, but, my Lord, the Bill as it stands is, in my humble opinion and in the opinion of those whom I have the honour to represent, inopportune, unsound, uncalled for and un-British. My Lord, it means the disfigurement of the political life in this country. It is a question of life and death to us. You, my Lord, have got the power under Regulation III of 1818, and also by issuing Ordinances, to suppress any kind of disorder. This legislation, I am sure, will weaken the political activity and political life in India, and it will certainly strengthen the hands of the Sydenhamites, the followers of Dr. Nair and members of the Round Table. I appeal to you, my Lord, that before it has passed the stage of this Select Committee, it may be dropped, and I do not agree with those who want to postpone it, because it is not a right remedy to suppress the present discontent. This discontent is a discontent of bread, and I am of opinion that it cannot be suppressed by repressive legislation." 12-55 P.M.

At this stage the Council adjourned for lunch.

The Hon'ble Mr. Krishna Sahay:—"My Lord, I am one of those who believed that the Government would not hurry up legislation to give effect to the recommendations of the Rowlatt Committee. During the Simla Session, only the other day, while opposing the Resolution of my friend the Hon'ble Mr. Khaparde about the report of the Sedition Committee and the working of the Criminal Investigation Department, I said that there was no evidence then that the Government was actually engaged in formulating legislation based on the recommendations of the Committee. In fact, I could not understand my friend when he said that he wanted the consideration and disposal of the Rowlatt Committee's report to be kept in abeyance. And yet, only after a few months, here is this Bill, with its twin brother the Criminal Law Amendment Bill, with all its hideousness before us, conferring extensive powers on the Executive which is liable to be abused or at any rate to be misused when political feelings run high in the country, laying down special rules of evidence and of procedure subversive of all principles of law hitherto accepted in this country. It is not proposed to pass this Bill as an emergency measure, for if that course had been adopted, it would have been possible for some of us, regard being had to some political crisis, to give our assent to it. But it is now proposed that this measure should be placed permanently upon the Statute-book of India and form the law of the land. My Lord, there is a world of difference between an emergency measure and a law which is to form part of the law of the land. It is 2-15 P.M.

proposed that it should be referred to a Select Committee on the very day that it is introduced into the Legislative Council. My Lord, I ask why this haste, why this precipitancy over this matter? I admit unhesitatingly the importance of the Rowlatt Committee. I admit the high qualifications of the members who formed that Committee, and the weight that ought to be attached to the conclusions at which they have arrived; but with all respect to what has fallen from Sir Verney Lovett, I do not admit their infallibility, especially when they proceed to suggest the methods by which anarchism or terrorism in this country can be suppressed.

" But apart from this, my Lord, it seems to me that the present is the most inopportune moment to introduce legislation of this character ; for whatever may be the criticisms directed against the Reform Scheme inaugurated by your Excellency and the Right Hon'ble the Secretary of State, there cannot be the least doubt that it has produced a very soothing effect on the public mind. I may go further and say that it has given rise to hopes of more spacious days to come. It has given rise to the hope that there is a brighter outlook for the people of this country in the liberal policy which has now been definitely adopted by the Government in their governance. Is this the time, my Lord, to create a feeling the very reverse of that which is necessary for the success of these reforms? The introduction of this Bill has been received with widespread alarm throughout the country, and it is clear that if it is proceeded with it will give rise to a state of things which will cause incalculable harm to the cause which every one of us has near at heart. We want peace, my Lord ; we need rest. A calm atmosphere is essential for the steady and progressive development of our ideals. Above all, we wish to secure this development by co-operation between the Government and the people. It is because I believe that the passage of this Bill through the Council will blast all our anticipations, all our hopes, that I raise my voice against the motion and support the amendment moved by the Hon'ble Mr. Patel. "

2-20 P.M. **The Hon'ble Sir Fazulbhoy Currimbhoy:**—" My Lord, I rise to submit my respectful protest against the principle of the Bill which has been introduced with regard to the Criminal Law (Emergency Powers) Bill and oppose its being referred to a Select Committee. It is my honest belief that the passing of this Bill in times of comparative peace and quiet would not in reality strengthen the hands of the Executive in so far as it would alarm and alienate a large body of non-official public opinion. My Lord, I associate myself with the abhorrence which is being felt everywhere of the methods of anarchical crimes in this country, and with the severe condemnation of them which has been made by the mover of this Bill, and by various Members who have already spoken. Those of us who have followed the course of Indian politics for the last few years have always deplored the appearance of what is known as the anarchist movement in India and all the forces that led up to it and have consistently supported the Government in their efforts to root it out. Many of us have seriously pondered over the tragic story of political crimes outlined by the Rowlatt Committee in their Report. The recommendations made by that Committee, unfortunately do not cover all the remedial measures which are calculated to wipe out political crime from this country. The principal means of removing them is a policy of conciliation, and all communities in this country had entertained the hope that the announcement of August 20th, and the political reforms conferring responsibility upon the people would have effectively quelled the acute political discontent which had been misdirected into these wrong and mischievous channels. My Lord, I cannot help feeling that this is a most inopportune moment for the passing of such a Bill into law. At no time in the history of this country were the forces of political anarchy so much reduced and under control as at the present moment. Coming at the time of the victory of the Allied arms and preceding the beneficent reforms which have been outlined in the Report of your Excellency and Mr. Montagu, such a legislation is bound to spoil the happy effect of circumstances that are welding together the various parts of the Empire into a great and abiding harmony. This will be the last Council called into being under the old constitution, and the life of this Council has been extended by your Lordship's behest until such time as the new Council

of a more representative character on a new basis can come into existence. Would it not be better to wait until that moment and to submit this question to the judgment of that Council? Personally, I would very much prefer the exercise by your Lordship of the power vested in your Government to extend the operation of the Defence of India Act and the rules made under them for a period of six or twelve months more so that an opportunity may be given to the people to go into the merits of the case before such a law is put permanently on the Statute-book. I am satisfied that no harmful consequence will ensue if this measure is delayed for some time, and it is possible that an improvement in the political atmosphere of India may actually obviate the necessity of ultimately passing such a law altogether. As a business-man I yield to none in my anxiety for the preservation of law and order and for the maintenance of the stability of the State, but after the most serious consideration, I find myself unable to give my support to an extreme measure of this character.

"I can assure the Government that they would have the best support of the Indian communities if they used the ordinary machinery of the law with a heavy hand to bring to book that band of misguided young men who have adopted the heinous and detestable methods of anarchy and violence.

"If still your Lordship's Government thinks it essential that a Bill of this nature be introduced, I would appeal to your Lordship's Government to accept the Hon'ble Mr. Patel's amendment of deferring this Bill until the Reform Councils are formed."

The Hon'ble Raja Sir Rampal Singh :—"My Lord, the Bill before the Council has been very exhaustively and eloquently discussed and criticised by my Hon'ble Colleagues who have preceded me, and I know it can serve no useful purpose if the same arguments be reiterated over and over again. But the Hon'ble the Home Member has reminded us of the responsibility that we have towards the Government and the people, and I feel I will be failing in my duty towards them if I do not raise my humble but strong voice against it. Telegrams after telegrams have been pouring in from all parts of the country in protest against this Bill. I cannot help observing that the Government have not been well-advised in launching upon this measure which, I am afraid, will not prove efficacious in eradicating the evil that has unfortunately crept into the country, and which is very greatly deplored by all sensible men. But I am constrained to say that the more the repressive measures will be adopted, the more the malady is liable to become serious. The human heart and the human mind are very sensitive and very delicate mechanisms, if I may call them so, in the human body and cannot be won over and brought under control by rough handling. 2-23 P.M.

"Pour more sympathy into the administrative machinery, open more outlets for the realisation of the legitimate aspirations of the people. Let India's interest, well-being and prosperity be the first and foremost consideration of the Government, and the evil is sure to die a natural death. My Lord, the provisions of the Bill are a distinct and serious encroachment upon the liberty and the fundamental rights of the people, and are sure to give rise to widespread discontent in the country at a time when it is looking forward with contentment and joyful anticipations to the Reform Scheme of which your Excellency and the Right Hon'ble the Secretary of State are the authors. Is it wise, is it expedient, will it be politic to hurl this law upon the country at this juncture when self-determination is in the air, and when everything seems to point and move towards and era of peace and contentment not only here but all the world over? Both the Bills which are on the agenda paper have created an alarm and anxiety in the minds of the people, and the feeling is shared by even the so-called conservative section of the Indian community. What is the hurry, is there any remotest apprehension that a few individuals who have got their heads turned will succeed in subverting the peace and order of the country and within a short space of time of one or two years? To have any such apprehension is a direct slur upon India's unflinching devotion and loyalty to the Throne. I join my Hon'ble Colleagues in the chorus of appeal that has been made to your Excellency to drop the Bill, at least for the present."

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2-27 P.M. **The Hon'ble Mir Asad Ali, Khan Bahadur :**—"My Lord, I beg to associate myself with the other non-official Indian Members in supporting this amendment. In doing so, I would appeal to your Excellency and your Excellency's Government to drop the Bill for the present. If the Government is not prepared to drop it altogether, they can at least accept the motion which is before the Council asking for its postponement. It is a dangerous measure, and were the Bill to be passed the consequences would be disastrous to this country. I trust the Government will consider the matter thoroughly, and knowing the general feeling of almost all Indian communities to be against it, will drop this drastic Bill and give people cause to be satisfied with the Government's action and be contented, but not discontented.

"With these few words, my Lord, I beg to support the motion before the Council."

2-29 P.M. **The Hon'ble Rai Bahadur Sitanath Ray Bahadur :**—"My Lord, it is not without considerable hesitation—it is not with a light heart—that I rise to question the desirability of permanently placing on the Statute-book a drastic measure which, I am sure, will be distasteful to the whole country. Though I must freely admit that the internment policy has been attended with very satisfactory results, as would be evident from the absolute cessation of murders and dacoities, which were so rampant in the country only a few years before, I cannot, in view of the proposed Reforms and in the face of what India has done in the war and the sacrifices in men and money made by her, welcome a permanent measure which will seriously interfere with the personal liberties of the people of this country. The Defence of India Act was an emergency legislation and a temporary measure adopted at a time when the British Empire was engaged in a life and death struggle—the greatest war that history has ever known. We accepted it to deal with a special situation. At a time when the energies of the Empire were engaged in bringing to an end the rampant militarism of Germany, and when it was necessary that all internal disorders should be effectively kept under control and crushed out, we readily assented to a measure calculated to put an end to the mischievous activities of the anarchists. Police-officers were shot dead in the streets and daring dacoities became frequent. I am personally aware of several atrocities perpetrated in the houses of my own relatives when thousands of rupees were lost by honest and innocent men who were helpless before gangs of desparadoes armed with loaded revolvers. It was in the house of one of my near relatives that a dacoity of a most atrocious character was perpetrated in the presence of thousands of men who had assembled to enjoy a theatrical performance, and the appearance of masked marauders was considered to be a part of the programme of the theatrical party, till they made their intention clear by forcing their way into the inner apartments and demanding from the ladies their ornaments, after which they successfully decamped with a booty worth about rupees thirty thousand. I might cite another instance in which another relative of mine carrying on business near my Calcutta residence was the victim of a daring dacoity, and was quietly relieved of ₹12,000 by a band of armed ruffians. I might cite numerous other instances, but they are so well known that I need not weary the Council by reciting them. Whether it was in Calcutta or in the interior of the country, it was always the case that the victims of these nocturnal raids had always been members of the community to which I have the honour to belong. So it will be easily realised that I should naturally feel inclined to uphold any measure intended to keep under complete control the marauders who masquerade under the borrowed plumage of patriots, but whose pleasant pastime it was to rob their own countrymen of their hard-earned money.

"In our younger days when we read in the papers here how the late Dr. Nishikant Chatterjee had been subjected to a search and turned out of his house on mere suspicion in Russia, we thought that an unfortunate country, where such things could happen and personal liberty trifled with, was no place for innocent men to live in. Yet when necessity arose we gave our unstinted support to a measure which empowered the Executive in this country to do such things.

"But I hope the time, when a permanent drastic measure like the Defence of India Act could be considered necessary, has passed away. The Allies have achieved a glorious victory and normal times have returned. At the present moment India is enjoying complete peace, and there is no sign of internal disorders. Moreover, the sacrifices in men and money that India has made in the war cementing with the blood of her sons, a brotherhood in arms with the Allied nations, fighting for a glorious cause has given her sons, as your Lordship has put it in the Reform Report 'a new sense of self-esteem.' The other day the Secretary of State for India recounted the services and sacrifices of my country and pointed out that during the war there had been recruited 11,61,789 Indians, the grand total of all ranks sent oversea from India was 12,15,338, the casualties sustained by this force was 1,01,439. 'Nobody' said the Secretary of State, 'could say that India did not bear her part in our victory and shewn herself to be, as in future, she must be treated a partner of the British Empire.' The Reform proposals made by your Excellency conjointly with the Secretary of State after the announcement of August 1917 have raised new hopes and aspirations in the Indian mind and dispelled dissatisfaction. Under the circumstances it would be a rude shock to the feelings of the people to rush a permanent drastic measure like this through a Legislative Council, whose sands of life are fast running out and whose term of office has been extended only to smooth the advent of a larger and more representative Legislative Assembly. The Defence of India Act is still operative, and though peace is within sight, the war technically is not at an end. Then to deal with persons whom the Government may consider dangerous, you have Regulation III of 1818. Moreover, the Government has the power to issue Ordinances and to bring in a fresh Bill when necessary. So with these three strings to their bow, Government can certainly wait and see how the new policy of conciliation and trust works, and whether the release of a large number of detenus would have a sobering effect on the misguided youths of the country, which I hope it would. Even the Rowlatt Committee in recommending emergency preventive measures said that every order authorising any interference with liberty must be made for a limited period.

"My Lord, to make my position clear I beg leave to say that I might have been willing to give my assent to a temporary measure to last for a short time in order to keep lawless element in society under effective control, provided the necessity for the measure had been proved, but as the Defence of India Act is still in force and is to run six months after the war, I fail to see the necessity for hurriedly enacting a permanent measure which will hurt India's sense of self-esteem and cast a slur on her loyalty and which, I am sure, will go to neutralise the high hopes and aspirations raised in the Indian mind by the proposed Reforms Scheme. With these words, I beg to support the amendment proposed by the Hon'ble Mr. Patel."

The Hon'ble Sir George Lowndes:—"My Lord, certain arguments have been addressed to this Council which I ought to deal with; but before doing so in any detail, I propose to make a few very short general remarks with reference to this debate. No one can conceal from himself that it is a very important debate in this Council and, as representing Government, I admit frankly that we have practically the whole opinion of the non-official Members against us. One Hon'ble Member has asked whether, as a Government, we desire to pay no attention to the opinion of non-official Members of this Council. The answer can only be that we have every desire to do so; but if we are asked to surrender our own judgment, maturely and carefully come to, on a very difficult question of policy, it is impossible for us to do so even to the unanimous opinion of non-official Members, who are not in the position of responsibility in which the Government is. 2-38 P.M.

"My Lord, one fact at all events has emerged from this debate which to me is a very satisfactory one. Hon'ble Members in this Council have admitted on all sides that the facts as found by this Commission are proved; no one has attempted in this Council to deny the existence of anarchical revolutionary conspiracies and agitators in India, or, I think, really to belittle the importance of their existence. The facts are fully admitted, and the facts lead necessarily to the conclusion that there is still existent in India an organisation

of this description which has been, if you like, repressed, held in restraint and kept down during the war, but which is none the less alive and ready to come into full activity again as soon as the repression is relaxed. That is the inevitable conclusion from the facts found by this Commission. Those are the conclusions to which the Commission itself have come, and I say it is impossible for us, if we are to accept those conclusions, to agree that a further power of repression is not a necessary weapon in the hands of an efficient Government. Hon'ble Members do not dispute the facts; they only dispute the conclusions, as deductions from the facts, to which the Commission have come. My Lord, we brought out, we created a Commission of the highest possible character, we asked an English Judge of eminence and reputation as a criminal lawyer, to come out here and advise us; they have advised us and we, as a Government, are bound to accept their recommendations. Surely we should stultify ourselves if we did not. And what have we against it? Hon'ble Members here, legal practitioners of great eminence, no doubt, in local affairs get up and tell us that they do not agree with the conclusions of the Commission. To which are we to turn? The Commission consisted of an English Judge, sitting with Indian Judges of long experience and great weight, with a non-official Indian Member as well upon it, and their recommendations were unanimous. Can we as a responsible Government refuse to follow them? Can we as a responsible Government accept as conclusive my Hon'ble friend, Pandit Madan Mohan Malaviya's statement that he does not agree with their recommendations? Which are we to turn to? Which are we to take? Can any reasonable man doubt? Well, we have made our choice, and we think as a Government we have made the right choice and the only choice that is possible to us. The position to my mind irresistibly suggests the case of a man who is admittedly sick and who has tried the local doctors and is not satisfied with their opinion; he brings out a specialist from Europe to examine his case and associates with that specialist all the leading doctors of the place, and then it is proposed that he should not take their advice. Now, in the ordinary things of life, do any of us act like that? Would any of us resist an opinion of that kind? The committee of eminent doctors advise a nauseous pill; the friends of the patient say :—"No, do not take it; try sugar and water.' The specialists advise an operation. The friends of the patient say 'No, put it off for six months; wait for something else to happen.' Is that the counsel which the ordinary man of the world will accept and follow? I trow not. Surely, we as a Government are only acting on the lines of common-sense in accepting the best opinion we can get, which is emphatic in recommending this legislation. In the first place, we have a remedy proposed and we find it disputed in this Council whether the remedy proposed will be of any use. Some Hon'ble Members have said 'that it will be useless; that it will not effect what we desire; that we shall not be able by these means to stamp out the anarchist conspiracy; that we shall only make it worse.' Here I am glad to see at all events that we have a very definite difference of opinion among the non-official Members themselves. I remember yesterday my Hon'ble friend, Mr. Jinnah, saying frankly and with the weight of his own experience behind him, 'I do not deny that there are these conspiracies and that you can get rid of them by the means you propose; I admit you can do so, but you can do it better in another way.' Other Members say 'that is not so'; there is obviously a division of opinion on the point. But what practical remedy for this state of things which is now admitted to exist in India is put forward by any non-official Member of this Council? We have heard the facts stated by Sir Verney Lovett, who knows them probably better than most of us, and what remedy has been suggested for them. I have heard my Hon'ble friend, Mr. Sitanath Ray, recounting experiences that have come very near to himself, and what remedy does he propose? What is the practical remedy proposed in this Council? Well, we have two; let me deal first with the no doubt practical suggestion in a way of my friend, Mr. Surendranath Banerjee. He says, 'You have got powers under the Defence of India Act which will last some time yet. Use them. After that pass an Ordinance to the same effect and use it for six months. Thirdly, you have got on the permanent Statute-book Regulation III of 1818. Use that.' Well, if I may take that in any sense as a mandate from Members of this Council, it

is a mandate for repressive legislation of a far worse description than what we are now proposing.

"This Act does not go nearly so far as the Defence of India Act, it is surely a far milder measure than Regulation III of 1818. Therefore, I say that the constructive policy that has been put forward by my Hon'ble friend to my right, Mr. Surendranath Banerjee, and which has been backed by a certain number of Members of the Council is a far more repressive one than the measure which has been condemned in the Council to-day.

"Then what is the alternative policy that we have heard from nine-tenths of the speakers in this Council? It is the policy which is summed up in the Asquithian 'wait and see'. Well, my Lord, we do propose as a Government to wait and see, but we propose before we start on the period of waiting to arm ourselves, in case it is necessary to use our powers again. Let me again take a homely illustration of what I mean. A burglar has broken into your house and has robbed you, and you think he is coming again, or at all events, you think he may come again. If you wait behind the door for him, do you wait without a weapon in your hands, or do you before he comes arm yourself and wait for him armed? This is all we propose to do. Many Hon'ble Members have spoken as if the provisions which are to be enacted by this Bill were to be brought into force in the whole of India immediately. Surely, they cannot have studied the Bill; the whole point is that Government are to be armed with powers which can be called into operation not by the Local Governments, not by the local Executive, but by the Governor General in Council, and they will only be called into operation if the burglar comes again. Then as to the policy of what I have called 'sugar', of 'wait and see'; 'try the effect of the Reforms'. If a snake has stung your son and perhaps killed him, do you try and charm the snake, do you make him an offering and ask him not to do it again, or do you kill the snake? We are arming ourselves with powers to deal with a case of that kind, and surely that is what every prudent man would do in the ordinary walk of life.

"Then, again, I venture to say that in this debate there has been a large amount of exaggeration with regard to the effect of this Bill; a typical instance of this occurred in the speech of my Hon'ble friend opposite, Mr. Chanda, when he spoke of the 'untold miseries', I believe those were his words,—the 'untold miseries' that this Bill will bring to the people of India. Well, it seems to me that that is a great exaggeration and for all the weight with which my Hon'ble friend spoke, I have yet to learn that the pulse of India is in Assam. Then my Hon'ble friend Mr. Bannerjea talked of innocent millions suffering for the sins of a few hundred,—the Hon'ble Mr. Jinnah said a few thousand. Here it was, I venture to think, his heart that led him away and not his head. We had one form of argument which really was, put into plain language, the threat of agitation. That is an argument to which no reasonable Government can give way. I venture to think that the agitation in India will be exactly what the politicians choose to make it. Then lastly, we were told, though I think I have dealt with the point before, we were told that the measure will be useless. It is admitted that something must be done, but nothing coming within the realm of practical politics has been suggested by our opponents.

"There have been other contentions raised which I should like to deal with as a legal member of this Council; they are possibly not so material to this discussion as they would be when discussing the details of the Bill, but as they have been raised, I should like to answer them to the best of my ability. The argument has been put forward that we have no power to legislate as we propose to do by this Bill. It was brought into being by Mr. Chanda and was taken up by the Hon'ble Pandit Madan Mohan Malaviya yesterday. He called for one of the Acts of the Government of India and told us he would elaborate the argument later, but went no further, and when the Council rose I did not know on what the argument was based.

"Dr. Sapru, my Hon'ble and learned lawyer friend, took up the offensive and carried it a little further, but it waited for the courage and ingenuity of my Hon'ble friend Mr. Khaparde, to bring the babe out of its swaddling clothes into the light of day. Then what was it? I hoped to hear something new and interesting. It was the old argument that was raised half a century ago in

Calcutta, and which has been revived from time to time; it began in the very well-known case of Amir Khan in 1869 or 1870 and received no acceptance then. It was raised a quarter of a century ago in Bombay and met with the same fate; it has been raised recently in Patna, and has again met with the same fate. It is the old argument that you are touching the allegiance of the subject by interfering with the right of liberty. It is the old argument which has been raised for half a century and has never yet found any supporter on the judicial Bench of this country. I do not propose to deal with it at any length. Let me read a few words only from the most recent judgment of an eminent judge in Calcutta, Mr. Chaudhuri:—

'The Indian Legislature both before and after the passing of the Indian Councils Act, 1861, has from time to time passed similar enactments authorising the privation of liberty in certain circumstances, and no instance has been cited to me in which such acts have been held to be *ultra vires* or in which any of the above arguments' (these are the arguments which the Hon'ble Mr. Khaparde has addressed to us) 'which have been repeated from time to time have ever been accepted as correct'. A similar point, I may note, was raised in England as to the power to restrain the liberty of British subjects and was carried to the House of Lords. My Hon'ble friend Mr. Khaparde read to us from a certain petition before the Privy Council. I know nothing of its contents. I only know that the petition was dismissed, and therefore it is not an unfair assumption that in the Privy Council too this argument found no favour. Is it, under these circumstances, wonderful that I, so far as I am the legal adviser of your Excellency's Government, have declined to suggest that there is any lack of power in the Government of India to legislate to this effect? Remember, that this argument could have been addressed and was addressed to the Courts after the Defence of India Act was in operation. We have had all these years of the war in which the ingenuity of the lawyers has been engaged in trying to attack the powers exercised under the Defence of India Act. We had two very big cases in the High Court at Patna not very long ago in which, as I say, all the ingenuity of lawyers from Calcutta and Patna was employed to try and make the Act of no effect. And these are the arguments upon which my Hon'ble friend Mr. Khaparde says that I ought not to have accepted the position that we have power to legislate. When I interrupted my Hon'ble friend the Pandit yesterday it was to say that in my opinion there was not the slightest shadow of a doubt as to our power of legislating in this matter, and I say the same again now.

"Then considerable point was made by more than one speaker with regard to the provision in the Bill as to the admission of evidence which it was said was contrary to the existing law, and with that I quite agree. My Hon'ble friend Mr. Jinnah argued that we should then have a trial within a trial, in order to ascertain whether the particular person whose evidence was being adduced had been spirited away in the interests of the accused. My Hon'ble friend suggested that this was a great blot upon the clause. I do not think I have misrepresented his argument. I think my Hon'ble friend forgot that possibly it was an unwise thing to argue this in an assembly which contains so many lawyers, as we already have a similar provision in section 33 of the Evidence Act. There you may have exactly the same inquiry, the same trial within a trial.....

The Hon'ble Mr. M. A. Jinnah:—"Under section 33 a statement is only allowed subject to certain provisions which I should ask you to read."

The Hon'ble Sir George Lowndes:—"I do not think my Hon'ble friend quite understands me. This clause, of course, goes a great deal further than section 33. Under section 33 of the Evidence Act, we all know that the evidence of a witness which cannot be produced is only admissible provided among other things opportunity has been given to cross-examine him: all that I am dealing with however is the argument which my Hon'ble friend Mr. Jinnah rather unwisely, as I thought, elaborated yesterday that the real objection to this clause of the Bill was that you would have a 'trial within a trial' in order to see whether the man had been actually spirited away. All that I am suggesting

to him is that we have exactly the same possibility under section 33 of the Evidence Act. He obviously forgets the provisions of section 33. The section deals with the relevancy of certain evidence for proving in subsequent proceedings the truth of the facts stated therein, *i.e.*, when the witness is dead or cannot be found, or is incapable of giving evidence or is kept out of the way by the adverse party. This is the passage in the section to which I referred. Here you have exactly the same 'trial within a trial' in order to know whether he has been kept out of the way by the adverse party. I am only meeting the argument that has been put forward. I am not dealing with anything else. Whether it is desirable to have such a provision in this Bill may be another matter, but the particular objection taken to it is of little weight if that is already in the law under section 33.

"Another point that was made by several Hon'ble Members and which has been emphasised by such an eminent lawyer as my Hon'ble friend the Pandit was that by this Bill we were taking away the birth-right of every man in taking away the right of appeal to the High Court which is part of the charter of liberty. I am not suggesting that these are his own words, but that is the trend of his argument. But does my Hon'ble friend and those who follow the same line of argument forget that until a very few years ago there was no right of appeal whatsoever in any criminal case in England? It is only a very modern innovation in the English law which has allowed a criminal the right of appeal.....

The Hon'ble Pandit Madan Mohan Malaviya :—"Have you any trial by jury?"

The Hon'ble Sir George Lowndes :—"In many cases in India we have a trial by jury."

The Hon'ble Pandit Madan Mohan Malaviya :—"Give us that and we are quite content."

The Hon'ble Sir George Lowndes :—"It is not merely going back to the English practice. I would remind my Hon'ble lawyer friends of what the law in India is. There is no appeal in a criminal case in India where the case has been tried in the High Court in a criminal Sessions. There is no appeal then, and why? Why have we adopted in India from very early times the right of appeal in criminal cases from the district Courts, from mofussil Judges, but not where the case is tried in the sessions of the High Court?

The Hon'ble Pandit Madan Mohan Malaviya :—"Is there not always a jury in the High Court?"

The Hon'ble Sir George Lowndes :—"We have juries in the districts just as much. But there is no appeal from a criminal trial in the High Court because of the higher status of the Judges; that I say is the difference. Here we are providing a tribunal to deal with these cases consisting of three High Court Judges, and therefore I say there is no necessity for a right of appeal and that the taking away of the right of appeal is not to deny

The Hon'ble Mr. Kamini Kumar Chanda :—"Is it not practicable to appeal from decisions of a High Court on a certificate by the Advocate-General or on a point of law reserved?"

The Hon'ble Sir George Lowndes :—"I am afraid my Hon'ble friend is not quite correct. He will, no doubt, remember clause 25 of the Letters Patent. It reads thus. I am reading from the Calcutta one :—

'And we do further ordain that there shall be no appeal to the High Court of Judicature at Fort William in Bengal from any sentence or order passed or made in any criminal

trial before the Courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law, for the opinion of the said High Court.'

"I am, therefore, correct in saying that there is no appeal where a trial is in the High Court, and here the trial that we are providing for is before three High Court Judges.

"Well, I do not desire to follow all the arguments that have been addressed to this Council to-day nor to go into all their ramifications. The various points that have been raised will be dealt with by the Select Committee which, I hope, will consider this Bill very sympathetically. I think it right to say, speaking for myself as a lawyer who has practised for some years under the English system of law, that I have a great dislike to legislation of this kind, and I would not support it as I do whole-heartedly now, unless I was absolutely satisfied myself that it is necessary. I dislike it, but I recognise the necessity for it. I, therefore, support it whole-heartedly as being necessary for the conditions that we have in India at the present time. At the same time I should like Hon'ble Members to know that, when the Bill goes to the Select Committee, any suggestions that they may have to make for mitigating the severity of it or doing away with possibilities of oppression and so on, will meet with sympathetic response from my Hon'ble Colleague, who is in charge of the Bill, and it is there that we may be able to do a great deal to meet the difficulties which many Hon'ble Members have dealt with."

3-4 P.M. **The Hon'ble Rao Bahadur B. N. Sarma:**—"My Lord, I have had the advantage of listening to the very able and eloquent defence by the Hon'ble the Law Member of the attitude of Government with regard to these Bills. He has asked us not to decide the issues by appeals to emotion, not to be misled by the dictates of our heart, but to use our intellect a bit to see whether the Government's position is justifiable, and whether the course they have adopted is not the right one. Before I deal with these questions, my Lord, I may be permitted to state that I shall try to appeal only to the intellect and not to the heart. Let me begin by saying that I had received instructions, or a mandate if you may so call it, from my constituency, a telegram from 13 members of the Madras Legislative Council, to oppose this legislation, and I need hardly say that I have received numerous telegrams from almost every district headquarters, from almost every town in the Madras Presidency, not to speak of other places, asking me to oppose this legislation. But I realise, and I have realised, that there is much truth in what the Hon'ble Sir Verney Lovett has said that we are here to lead and not to be led. I have, therefore, tried my level best to put myself in the position of Government, to realise the responsibilities of Government in maintaining the peace and tranquillity of the country. And to see whether it would be possible for me to reconcile myself or ask the country to reconcile itself to the course which has been pursued by the Government of India in this particular instance. Now, my Lord, what is the issue before the people? The broad, naked issue is whether the people should be satisfied under the present circumstances with a rule by the bureaucracy, by the Executive, pure and simple, uncontrolled by the judiciary. The experiment which the Government has successfully tried during the last century, or century and a half, of ruling the country with the aid of the judiciary, the Government ask us to believe, has miserably failed, and that therefore there is no option left but to rule by the sword, by martial law in essence because the rule by the Executive suggested is practically tantamount to rule by martial law disguised under civilian forms. Therefore, my Lord, the question is, are the people to submit? Is there any necessity for submitting to a rule by the Executive after enjoying the benefits of a judicial administration, pure as far as human ingenuity can devise, is there any justification for asking the people hereafter to forsake their liberty in the name of order and peace and tranquillity in this country? That is the naked issue. Has the Government, I would respectfully ask, realised the full significance of their admission in bringing forward this legislation at the present moment? To my mind they have confessed that, after a century of British rule, the rule of the bureaucracy has brought India to such a state—progressive if you please—

that they find that the judicial administration, their own creation, hampers them to such an extent that they would have to discard it if they are to rule India at all peacefully. That is the confession, a confession of inefficiency, a confession of absolute failure, the logical result the admission of the need for this legislation if the Government should press for it. Well, people have been saying that to a very large extent and therefore pressing for reforms, have been asking the Government to take the people into active co-operation as government on the old lines is absolutely impossible. Now the answer of the Government to that may be we have realised that and that is the reason why we have brought forward a scheme of reforms which would give self-government in course of time to India, but meanwhile we find it absolutely necessary to arm ourselves with these powers during the transition stage. It is true that the present system of government is a failure, that we cannot rule on these lines, but we at the same time have to arm ourselves and go back upon our position to some extent and treat the whole of India or portions of India as if they were Agency tracts before the self-government scheme is in working order. My submission is that the policy of the Government for which something has to be said, that the bitter pill which has to be administered to the patient had better be administered prior to the sugar pill, and that the patient would appreciate the sugar pill a little more if the bitter pill were administered first, that repressive legislation should be introduced first and the liberal legislation later on is unsound. What we have to ascertain is whether the bitter pill is a real medicine, whether it may not exasperate and kill the patient, whether it is worth the while of the patient to live an inglorious life, deprived of all security of person and liberty in the hope that on a future day there might be reforms. The next question is as to whether this bitter pill is likey to attain the end which the Government has in view. The Hon'ble Sir George Lowndes and the Hon'ble Sir William Vincent, the Home Member, have practically accepted the dictum in the Report of the Rowlatt Committee that even in 1914, prior to the theft of Messrs. Rodda's arms, it was felt that the forces of law and order had in this respect been vanquished, and that the sedition party was too strong for the Government. Is that a correct statement of fact? My Lord, I submit that it is not and I beg leave to dispute it; I take the liberty to say that the police of Bengal as of other provinces have been as efficient, perhaps much more efficient, in tracking this particular kind of crime than they have been in grappling with other serious forms of crime, and if there is any inefficiency, if there is any inability to cope with the situation, it is not to be noticed in this particular case alone, but it is to be found all along in the case of grave crime. I beg permission to quote only a few facts to show that I am right that in the matter of the sedition trials the Courts have been a little more lenient towards the prosecution than they have been in the case of other crimes, and that the percentage of convictions has been much higher than in the case of murders and dacoities, and therefore it is not a correct fact to say that the forces of law and order have been found inadequate in this particular instance. If you say that they have been all along inadequate in dealing with grave crime, I have no answer but to say, 'yes,' but if the Government thinks that they have been adequate in dealing with grave crime but that in this particular instance alone they have failed, I beg to join issue with them. What do you find? The Committee say that in the ten attempts to strike at revolutionary conspiracies, 192 persons were involved in the prosecutions launched, and that 63 were convicted, that is a percentage of about 33. Now, my Lord, what has been the fate of the cases which have been brought to the Courts for murder and dacoity. You find that in Bengal during the year 1912, 420 reported cases of murders and only 39 convictions, which is 9 per cent. You find in 1915, 514 reported cases and 71 convictions, about 11 per cent., in 1917, 425 and 60 convictions. And if you take the number of persons, you will find the proportion would be nearly the same.

"Take dacoities again. You find there were in 1912, 249 dacoities and you have had only 19 convictions or 7 per cent. and you had in 1915, 769 dacoities and 102 convictions as against 24 or so in the case of sedition. You might multiply instances and you will find that, although the Bengal police take credit to themselves that in the detecting of cases including miscellaneous cases they

have been more efficient than the rest of India. Taking the whole of India the police in other provinces have been much more efficient than the Bengal police in the matter of tackling grave crime. Therefore, my Lord, having such an inefficient machinery in your hands, can the Government complain that the people have not loyally co-operated in dealing with this sort of grave crime. It is not the fault of the people that they have not succeeded in enabling the Government to secure a larger number of convictions. It is the fault of the administrative machinery. It is the mutual adulation society in which we have been living, one department supporting another, each department praising its own men and the others accepting it, that is responsible for this state of things. Therefore, if you ask for a remedy, the remedy is to make the police in general, and the Bengal police in particular, more efficient. Because the police, having search powers, having so many vast powers entrusted to them, had not been able to discover anything until seven or eight years after the rebels openly proclaimed themselves, you say to us, 'we are inefficient we have such a hopeless machinery, therefore arm us with powers depriving the people of the security they enjoy under the protection of a judicial administration.' It seems to me that that is not a fair proposition to advance.

"Let me take up another argument which was advanced by the Rowlatt Committee that the convictions have not been able to repress crime. Have they repressed crime in the case of murder? Have they repressed crime in the case of dacoity? We find that the number of crimes has been increasing year after year throughout India. This state of things is not confined to the case of sedition alone; it is to be found in the case of all grave crime. 3,340 reported murders in 1903 and 4,770 in 1915 with 1,103 and 1,401 convictions and 2,339 and 3,738 dacoities with 443 and 733 convictions. I shall not weary the Council with further figures, but that is the state of things.

"Your Lordship, the question has been asked what is your practical suggestion? My practical suggestion is this. Just as you stamped out the Thugs by a special department, if need be, create a special department and stamp out this crime. If a province is so beggarly as not to be able to find money for it, take the money from the other provinces, if necessary, in order to be able to finance that province; but in the name of common sense do not deprive the people of other provinces of their rights and liberties, or at any rate do not subject them to the risk of losing their rights and liberties simply because you find one administration unable to cope with crime of a particular character.

"Well, therefore, my first position is that the statements upon which the Rowlatt Committee has based its recommendations that the forces of law and order have been found not to be equal to the occasion and that convictions have not been able to repress crime are only partially true, and that if we are to follow up the logic of the proposals, we shall have to discard judicial administration in the case of all grave crimes also in order to be able to attain the ends we have in view. I cannot but feel, my Lord, that, notwithstanding the safeguarding words that it is only in the case of a seditious movement being connected with certain grave crimes that this machinery is to be employed, notwithstanding the employment of these words, an inefficient police would only have to say 'so and so, who is a political preacher, has preached here and dacoities have gone up,' to invoke the provisions of this Act, and we find, as a matter of fact, ordinary Hindu-Muhammadan disturbances being tried by special tribunals under the Defence of India Act. That procedure may be followed hereafter, the name of sedition being conveniently employed. Therefore, I would ask that those essential facts on which the Report has been founded should not be treated as proved or employed as arguments in support of this legislation.

"Then, my Lord, the question was asked what else would you suggest? What are the constructive proposals you have? Well, one of the constructive proposals we have always suggested is to give us the power. If the Government finds that they cannot manage law and order, let them put them under the control of a representative assembly, and I am morally certain that they will be able to repress this sort of crime much sooner than may be imagined. People will know where to hunt for these men, they will devise the

necessary machinery. But, my Lord, may I ask, have the people of that particular locality where this crime has been so prevalent been quartered with any punitive police in the past? Has the Government ever tried the experiment between 1906 and 1918 of asking the people where these disturbances occurred to pay for the police and to co-operate with the police in repressing the crime? What practical steps have been taken by the Government beyond the strengthening of the Criminal Investigation Department, working in secret to tackle this sort of crime that they should come forward and ask this assembly to enact that the people should submit to a sacrifice of their fundamental rights of citizenship? After all, what does the Rowlatt Committee itself say? The Rowlatt Committee says that this sort of crime is not indigenous to any province, that it has been accidentally imported into the Punjab, and that even in Bengal there are so very few people who are given to it compared with the total population, that there is no real danger of its spreading. And the proof of there being no real danger is that even before the Defence of India Act was in force rigidly in Bengal, the Government have during the most troublous times of war been able to enforce all their measures, that the people have been loyally co-operating with the Government, and that although there was sedition it was never a hindrance to peaceful administration during the most troublous times of war. I ask, therefore, if the people have been so loyal and if they have co-operated with the authorities so loyally during the most troublous times of war, is there a case made out for asking the Legislative Council to equip the Government with these powers in times of peace? Well, it has been said these powers are not going to be used immediately; they will be on the Statute-book so that people may be told, 'if you employ terroristic methods we will also employ terroristic methods.' It comes to that. If the Executive are going to shut up any man without any inquiry, without allowing him a chance of proving his innocence in a law Court, it means that the Government are prepared to ask this Council to equip them with terroristic weapons in order to cope with terrorism. I ask, in this peaceful time, would it be right for the legislature to put on the permanent Statute-book a law giving the executive Government powers to terrorise in the manner they ask that they should be permitted to do? I humbly submit, no. Is there any difficulty in the Government of India passing legislation at a moment's notice? That question has not been answered. It is said, why should we not arm ourselves with power before hand? I say it is dangerous, because a bureaucracy always loves power, loves to arm itself with power and abuses that power, if it is armed, whereas if it has to make out a case on a specific occasion, it will see to it that it does not come up unless it has a very good case. That is one reason why, although we realise that the Government can at a moment's notice or even without notice pass an Ordinance or pass a law—and the Government of India are not going to weaken themselves in any way—we object to arming them in advance because the natural tendency is to accumulate more and more power in the hands of the bureaucracy, and we wish to check it. My Lord, has not that tendency been exhibited in this particular case? What are the powers which the ingenuity and the wit of man, of lawyers and of thorough-bred bureaucrats could devise which have not been given already? What are the measures which are not already on the Statute-book even if this Bill is not passed into law, which can be devised, consistently with resort to judicial tribunals? You have passed a law prohibiting any public meetings being held when you wish it; you have taken power to search for any seditious article anywhere; you have taken power to suppress the Press, to confiscate the Press. You have taken power about the burden of proof being laid upon persons who are found in possession of explosives. You can prevent any press from publishing seditious matter; you can confiscate the press and prevent the Post Office from being employed for these purposes. You have got all these powers in your hands. The only drawback the Executive sees is that there might be some shadow of supervision by the judicial tribunals. Hitherto the bureaucracy have not been able to resist the invasion of the judicial tribunals into their preserves in every matter, although the Calcutta High Court has admitted that their powers are practically nugatory. Apart from that, you have accepted that in some instances there might be an appeal to the law Courts. You have got in your Statute-book practically all that

you ask for in this measure subject to that one reservation. Therefore I ask, what is the necessity for this measure except that you are mortally afraid of a resort to the law Courts? You are so mortally afraid of your own tribunals and your own judicial officers, that you feel you cannot tackle any problem so long as the judicial tribunals can step in and it is because the bureaucracy has been exhibiting for the last 50 years its mortal dread of judicial tribunals, it is because we know that is the only safeguard of the people that we ask to be protected against legislation of this character. My Lord, what is the golden thread, the silken tie, what is the bond of allegiance between the people and the Government? Hitherto, statesmen, jurists, publicists, administrators of the highest character have admitted that although the Government is really bureaucratic, the people are willing to submit themselves to British rule because they feel that their lives, their properties and their persons are subject only to the jurisdiction of lawfully established law Courts. That is the real tie of allegiance. I know what is passing in the minds of some executive officials. They would ask us to remember what was the state of things in the ancient kingdoms ruled by Hindus and Mohammadans, and whether the old monarchs did not enjoy arbitrary powers, and if they had them why the British Government in India, with its British spirit, should not be permitted the same powers which they would not employ in the same arbitrary manner as the former rulers of India, may be presumed to have employed them. My answer to that is, if you want us to revert to that kind of rule, let us revert to it entirely: the only reason why we submit ourselves willingly to you is because we feel that your administration of justice is pure, and it is because we feel that it is not likely to be so pure under any other form of Government that we cheerfully accept our apprenticeship under you before self-government dawns in this country. Remove that single link between us and I for one do not see any reason why the people should not say 'Let us have *Swaraj* within the Empire immediately' My Lord, you are driving the people to desperation. You are snapping the tie—unconsciously and without knowing it—you are snapping the only tie that makes the people submit willingly, nay cheerfully, to your bureaucratic rule, by saying 'We shall suspend the administration of justice when it pleases us to do so.'

"It is unnecessary to elaborate the argument.—I will not say it is unnecessary—but perhaps it is useless to enter into the question of law whether this Council has jurisdiction to pass a law of this description. My own idea is that this Council has not the power. Section 65 of the Government of India Act has been already quoted. I will not waste the time of the Council by reading it; but inasmuch as the question has been raised, I think I shall have to dwell for a few minutes on that point. The unwritten law and constitution of the United Kingdom guaranteeing the liberty of the subject is the bond of allegiance between the people and the Crown. Queen Victoria's proclamation and various other proclamations have laid down that we are to be treated on the same footing as Her Majesty's British subjects. In the Collection of Statutes relating to British India published under the authority of the Government of India, the first Statute which relates to India is the Magna Charta. Statute 28 of Edward the third, 1354, says:

'No man of what estate or condition he be shall be put out of land or tenement, nor taken, nor imprisoned, nor disinherited, nor put to death without being brought in answer by due process of the law.'

Hon'ble Members may say that this section and these Statutes have been practically repealed by section 65, which says that the Government of India may repeal all British laws passed before the year 1860; but they are not included among the Statutes repealed and there is a reservation: These Statutes relate only to the constitution of the United Kingdom—the constitution to which we look for the protection of our lives and liberties, and on which our allegiance is based and there would be no meaning otherwise in putting in that last clause dealing with the allegiance of the subject if these also were to be treated as not applicable to India. Technicalities apart, however, that is the only bond, and pray remember that you should not snap that bond.

"Then, the Government have said—'Here is the Rowlatt Committee consisting of such eminent judges, fortifying us in our conclusions, and would

it be right on the part of this Legislative Council, consisting of inexperts who cannot know the facts correctly, to ask us to swerve from our decision because they choose to think in a different way. The responsibility is ours—not theirs.' I realise that the responsibility is chiefly yours and not ours, but may I submit, my Lord, that the Rowlatt Committee were not asked as to what measures were necessary in order to cope with this evil. That political question was entirely out of their jurisdiction, although they have indulged in the first paragraph in the gratuitous remark that representative institutions are foreign to this country. Heaven alone knows what relevancy there is in that. The Government of India had their legislative scheme cut and ready practically, and the Rowlatt Committee had an opportunity of examining it and simply followed it. But how can the people accept a Report the evidence on which it has been based having been withheld from the public? Secondly, I am not here impugning the honesty of purpose, the *bonâ fides* or the ability of any of the members who sat on the Committee; but may I ask if it was impossible for the Government, knowing that a resolution was moved in this Council asking for a mixed committee to be appointed, to ask the Imperial Legislative Council to nominate one or two of their members to sit on this committee and to assist in their deliberations? Will not the people say, have not they already said, that this committee was specially chosen by the Government, that they had no lot or part in its selection, that men of a particular temperament, whose honesty cannot be impugned, might have been selected because they were men of that temperament?

"I know that in Madras one speaker has alluded to the distinguished President as being of an autocratic temperament, because he walked out of the judges' room when the petition of a conscientious objector was to be heard, saying he had better things to do than listen to such frivolous objections. Such things are being said. It is also said that Government has unwittingly committed a mistake in appointing acting men. I have the highest respect for my distinguished friend the judge from Madras, and I say from my knowledge of him that he could not have allowed any corrupt or personal motives to creep into his decision; but still the Rowlatt Committee has said that the future is to be safeguarded by permanent judges of the High Court being placed on these tribunals, thereby showing distinctly their opinion that Government were not altogether happy in choosing an acting man. I say the Government has lent itself to these attacks unwittingly, because I for one moment will not attribute the slightest motive to the Government in making their choice; but I cannot help feeling a regret that Government could not associate with this committee men in whom this Council or the Legislative Councils of India have confidence, and then this report might have had greater weight with the people than it has at present. Several official Members of this Council have alluded to the acceptance by this Council of the findings of fact of the Rowlatt Committee. What are those facts which this Council has accepted? The facts which the Council has accepted are that there was revolutionary crime of a dastardly character which had to be put down, that there is anti-British feeling in certain parts of India which will have to be stamped out if there is to be peace in the land; to that extent every one of us is agreed; there is absolutely no distinction on that point; we all endorse that. We are in common agreement that it will have to be stamped out and that it does exist. But on the other conclusions, namely, that the existing forces of law have failed or that political remedies that may be applied may not stamp out the evil, and on several other conclusions of facts we respectfully demur to their accuracy. The Rowlatt Committee sat *in camera*; it had nobody to put the other view; it had nobody to press any other view, and I well remember several experiences of mine as a lawyer to show how even the ablest judges when they hear only one side of the case put before them come to a rapid conclusion, and how difficult it is for the other advocate to dislodge the judge from a wrong position once taken up. I recollect very well in my early days when I went to argue an appeal before a Collector, he said 'Well, Mr. Sarma, you appear for the appellant. I dismiss your appeal.' I begged for a couple of minutes to permit me to argue my position; I was permitted luckily for my client and I managed to get a reversal of the lower Court's judgment. I will not weary the Council with many other instances, but I think that will illustrate the danger of the best men coming to a wrong

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conclusion even with regard to facts on an *ex parte* statement. The Government had these facts; the Rowlatt Committee had the very same facts and came to certain conclusions based upon these facts. If the Rowlatt Committee or the Government wanted the people's approval they ought to have allowed the other side to say what they could; but that is a point which I need not further labour at the present juncture.

"Then, with regard to the repressive measures being taken up before the Reforms are taken up, I say one word. I submit with all humility that there has been a great mistake of policy There is a revulsion in the land which I have been noticing in favour of strengthening the Government's hands and strengthening the cause of moderate reform. The forces of extremism have been or are being slowly but steadily subdued. Government has succeeded in quelling prussianism. Do not allow the people for goodness' sake to say that in quelling prussianism abroad you have to come to establish prussianism in the country. That is what the people are saying. There is a feeling that Germany has been conquered for the benefit of mankind, that freedom and liberty are in the air, that even nationalities much worse placed than we are are hoping and rightly to get governments of their own and that we also may have our fair share. At such a time of hope, when every attempt is being made even by anarchists, to abandon their methods because they see all hope of succour from Germany or from any other country is shut out from them, even they see how futile it will be to endeavour to subvert the British Government; at such a time as this. I pray that you should strengthen the moderate element. What will be the result if the representations of all the non-officials being rejected, as possibly will be the case? These anarchists would say 'Now, look here, you have been talking all along about moderates and extremists; what have you moderates succeeded in getting from Government? You have been utilised for certain purposes of Government, but when Government has set its mind on any object there is no use in your trying.' Do not drive moderates into that humiliating position. Nothing is lost when you have got the power to enforce your will at any moment by agreeing to a little delay as has been asked for. Let us not imagine that the Executive would not always abuse its power. I remember very well in my early days when I entered the Madras Legislative Council that a petty quarrel not of a very edifying kind, in which a European was involved, led to an assault and the military were called in because there was political fervour previously in and about the place. There is likely to be a mistake of cause and effect, and unrest will be created by our anticipating it. I therefore pray that that should not be done. If you have to do anything by way of taking legislative powers, create permanent judicial tribunals, even when you want to act under the preventive sections of the Code. Let legislation be temporary, but to think, to dream of putting this on the permanent Statute-book seems to be madness. We ask for co-operation; you ask for co-operation; we reluctantly oppose this Bill because we love the British connection; we realise that it is only by the prolongation, if possible for ever, of the British connection between the two countries India's destiny will be achieved. It is because we feel that our hopes are centred in this permanent union that we ask that you should listen to our advice; it is because we are desirous of safeguarding the elementary rights of citizenship, we do not wish to condemn the bureaucracy of so much inefficiency of which they are unconsciously accusing themselves; it is because of this that you are playing into the hands of the anarchists, we are not satisfied that this measure is necessary, and we do not wish to render the administration more inefficient than it is; it is because it is not competent to the Indian legislature to pass this law, and we do not wish to create unrest by anticipating it; it is because there is the possibility of specific legislation being undertaken to deal with any particular individuals who may be undesirables and who may have to be released when the Defence of India Act is repealed, if the Regulation of 1818 is felt to be inapplicable, that we ask the Government to pause and to listen to our advice."

The Hon'ble Mr. Mazharul Haque:—"My Lord, I do not want to make a long speech and to try the patience of the Council which has already been tried long enough for the last two days But in this fateful hour sisting the life of my country, I cannot give a silent vote on this occasion. My

Lord, yesterday the Hon'ble the Home Member told us that we the Indian Members of this Council were on our trial, that by the manner we voted on this we would be judged, that is to say, if we voted for the amendment of my friend, the Hon'ble Mr. Patel, we would all prove ourselves unfit for self-government. If we in this Council prove ourselves false to our country, betray our motherland, then surely we are unfit for self-government, otherwise we are not. I for one do not see any logic in that statement of the Hon'ble the Home Member. I refuse to take that statement seriously. To-day we have heard a very eloquent speech from the Hon'ble the Law Member for whose ability and erudition I have the greatest respect. For the exposition of the legal points which he gave us I entirely bow to him, but on the political aspects of this question I beg to differ. My Lord, I oppose this Bill on several grounds. Firstly, I think, that no case has been made out for the introduction of this measure ; Secondly, I think it is the negation of all law ; Thirdly, I think it is dangerously inexpedient; Fourthly, it is entirely inopportune, and lastly, no urgency has been shown for this measure. My Lord, without entering into details I say this, that coercion has never succeeded in this world. Look at the entire history of mankind and your Lordship will find that it has failed, and miserably failed. Look within the bound of the British Empire itself and your Lordship will find that the history of Ireland is a history of coercive measures, have they succeeded? What I say is this, that in this year of Grace 1919 we find there is a party of Sinn Feiners which is the result of the coercive measures enacted for the benefit of Ireland. My Lord, I know the temper of my people. We Indian Members all have opportunities of mixing with the highest and lowest of Indians ; I wish I could say as much for my European colleagues here ; and I tell the Council with all the responsibility that attaches to the utterances of a Member of this Council that the temper of this country is not sweet, and that it will not put up with this legislation. My Lord, your Excellency's Government is standing on the brink of a precipice. I entreat your Lordship with all the earnestness I can command to pause before taking the final leap."

The Hon'ble Mr. Srinivasa Sastri:—"My Lord, when some months ago this Council debated the Resolution moved by the Hon'ble Mr. Khaparde on the Rowlatt Committee's Report, I refused to support that part of his Resolution upon the ground that I did not regard the Report as fiction but as a startling revelation of fact. Of course, I said that while it might lead to some legislative action there was time enough to consider the action when it actually came before the Council. That time has now come; the Government have actually made proposals, and we are invited to consider them. I am unable to find that either the nature of, or the time for, legislation is suitable. As to the nature of the legislation laymen like me will not be on sure ground in stating the reasons in a technical way, but as to the time for the legislation I am perfectly clear that the Government have chosen a very unfortunate time. In the first place, your Excellency, I think it is not in accordance with the practice of other Governments to bring in repressive legislation of this nature long before its necessity has become clear. I was listening with the greatest respect to what the Hon'ble the Home Member said on this aspect of the subject, and I beg leave to say that he rather overstated his case when he told the Council that the Government must not be left naked and defenceless when the burglar had made his appearance. The Government cannot be naked and defenceless, it is avowedly in full possession of the powers that it needs to put down wrong of every kind; that will continue for many months yet and if it pleases the Viceroy for another long year yet it will remain in possession of all the needed powers. To say that the necessity has now come and that the Members of this Legislative Council should not leave the Government in a position of defencelessness is certainly in my opinion to over-state the case. Then the Hon'ble the Home Member also relied on the recommendations of the Rowlatt Committee, but I am unable to find in the recommendations of the Rowlatt Committee any mandate or any strong counsel to the effect that any of the measures proposed must be permanent, that they must be worked into the Penal Code, or into the Criminal Procedure Code of the land. Their character as emergency legislation must be recognised. I

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think the course taken by the Government in recommending to this Council permanent legislation involving alterations in the Penal Code and the Criminal Procedure Code goes beyond the recommendations of the Rowlatt Committee, and has necessarily, therefore, evoked a great deal of alarm. I conceive, your Excellency, that it was hardly necessary to frighten the country by saying that the Government must be armed with powers of a permanent character. I very much wish indeed that the Government had found it possible in the first instance before raising a storm to say that they would be content with these powers being placed in their hands for a temporary period. When in the course of time the Defence of India Act expired or the Defence of India Act extended by the Viceroy expired, it was still necesssary to have these powers, it was open to the Government to call a special Session of the Legislative Council, and I do not think that when the Government take such a startling step as to call a sudden session of the Council to equip it with the necessary powers to meet with a dangerous seditious conspiracy, any one in the country will raise his voice against it. Now everything seems to be alright, wrong-doing is under full control, and Government can say that in the exercise of the powers they have, they have secured peace and tranquillity. To say now, long before the necessity may arise that we want to equip ourselves permanently with weapons of repression—that word has been used by Government Members themselves and I have no scruple therefore to use it—is in my opinion simply to set the country in an unnecessary state of excitement.

"Then we are told that after all these powers are not placed in the hands of small officials. The small officials come in only after the Viceroy has satisfied himself that in certain areas in the country crime of a very deep-rooted and widespread nature is prevalent or is likely to become prevalent. Now I take leave respectfully to dissent from the implications of this proposition. The implications of this proposition go very deep indeed. We are asked to supplant the experience of civilized Governments. If every word that the Hon'ble Sir George Lowndes told us were to have its due weight, if what he said were to be carried to its logical conclusion, if in every case where the Executive were armed with arbitrary powers they used them only justly, properly and no more than was adequate to the occasion, if in every case of mis-exercise they could be brought to book, if there was provision for publicity, then indeed there is apparently no reason why in the permanent law of England, in the permanent law of France and in the permanent law of America there should not be legislation similar to that which is proposed for this country. After all, it is good to have these powers. No Government will ever abuse its power. The Executive, wherever they have the power, always use it only when it is necessary. If that is so, if there is no fallibility in the Executive, if all high officials charged with responsible power never erred, then there is no limit to the placing of arbitrary power in the hands of any Executive which a Legislative Council may be called upon to sanction. That, however, is not the way in which responsible people look at things. They ask, are these powers necessary? I was wondering how the Hon'ble Sir George Lowndes himself having made these rather sweeping statements came later on to say 'I myself as a Britisher hate this kind of thing; repression is distasteful to me.' I heard the Hon'ble Sir William Vincent also say 'after all, these things are bad.' Why should they be bad? We are bidden always to trust the Executive, to believe that they will never do wrong, the law will always be used considerately and only in the interests of the poor and the helpless; why should it be wrong then; why then, should we scruple at all to leave all power in the hands of the Executive, to roll up our Courts of law, to suspend or lay low your Legislative Councils altogether? That is not the way that we should look at things. We think that the Executive are apt to make mistakes, and I think they do make mistakes. We know, my Lord, Viceroys who have held, who are holding and who will hold power are under no delusion that the Local Governments can make no mistakes whatever; that the heads of Local Governments may not yield to the public opinion of their community, may not be hounded on by an infuriated press to take in hand a policy of severity, always no doubt with the best of intentions, always no doubt with a feeling

of horror and repugnance, always no doubt with a desire to stop everything the moment it should become unnecessary. But we know, my Lord, from bitter experience that these measures are put into force sooner than they become necessary; that while they are put into force they are exercised more harshly than is necessary, and that they are dropped only with the utmost reluctance long after the exigencies that called them into existence have disappeared, long after enormous miseries and frightful hardships have been inflicted. We know that these things have happened, and it is because I take it every Englishman feels that these things may happen that he is obliged to say when he stands up in defence of a legislation of this kind, however strongly he may word it in one part of his speech, 'I certainly dislike these things; they are objectionable on principle.' If they are objectionable on principle in one place, they are objectionable on principle in every place, and their application must be tested by the severest tests and they must at every step be open to challenge. In England, my Lord, as I have read these things, whenever a repressive law is in force, every single exercise of it is at once openly challenged. A public inquiry is probably held. Anyhow a committee is appointed to take evidence. What happens in India? A press law is passed. ten years afterwards in the Supreme Legislative Council an inquiry to be conducted by a mixed commission appointed by the Council is asked for, and your Excellency's Government come forward and say 'we will not appoint a committee. We will not face an inquiry into this affair.' Now that kind of thing is not a circumstance which encourages us to go forward and place summary powers in the hands of the Executive, because we fear with some experience behind us, that you will not submit your actions to the scrutiny of the public as every exercise of arbitrary power should be submitted.

"Then we are told with almost pathetic simplicity quite worthy of a paternal Government. 'Why need the innocent man fear? The honest man need not walk in fear of these repressive measures; they are meant only to punish the wicked and they will be used only to punish the wicked; let the virtuous men go about as usual in the exercise of their work.' I wish that this idyllic picture were true in India or anywhere. Now, my Lord, a bad law once passed is not always used against the bad. In times of panic to which all alien Governments are unfortunately far too liable, in times of panic, caused it may be by very slight incidents, I have known Governments lose their heads. I have known a reign of terror being brought about; I have known the best, the noblest Indians, the highest characters amongst us, brought under suspicion, standing in hourly dread of the visitations of the Criminal Investigation Department. I remember in my own time; it is not a very long experience I have of these matters, but I can remember a very valued friend of mine, now alas no more, a saint amongst men, telling me with almost tears in his eyes, 'I have borne a good character all along, but I have recently become a suspect of the Criminal Investigation Department and my life is passed in bitterness and in sorrow.' Why? because Government started a policy of suspicion generally in the locality and when they sent their minions of the Criminal Investigation Department none, not the most trusted friends of Government, were safe. I can remember, my Lord, in the year 1908 when I went round organising district Congress Committees, such a blight had fallen on the political world, the Criminal Investigation Department had been so active, the repressive policy of Government had been so manifest, it was impossible in many places to get people to come together to a public meeting. 'Oh no, not now, not now!' A gentleman high in office at that time and about to retire from service met me in the middle of the night on one occasion. I was quite surprised, and he told me—'My dear fellow, I have been longing to see you these three or four days that you have been here, but this place swarms with spies and informers. I am nearing my pension and have many children, I do not wish to be mixed up with a member of the Servants of India Society to their knowledge.' It is all very well to say that the innocent are safe I tell you, my Lord, when Government undertakes a repressive policy, the innocent are not safe. Men like me would not be considered innocent. The innocent man then is he who forswears politics, who takes no part in the public movements of the times; who retires into his house, mumbles his prayers, pays his taxes and salaams all the Government

officials all round. The man who interferes in politics, the man who goes about collecting money for any public purpose, the man who addresses a public meeting, then becomes a suspect. I am always on the border-land and I therefore, for personal reasons if for nothing else, undertake to say that the possession in the hands of the Executive of powers of this drastic nature will not hurt only the wicked. It will hurt the good as well as the bad, and there will be such a lowering of public spirit, there will be such a lowering of the political tone in the country, that all you talk of responsible government will be mere mockery. You may enlarge your Councils, you may devise wide electorates, but the men that will then fill your Councils will be toadies, timid men and the bureaucracy, armed with these repressive powers, will reign unchecked under the outward forms of a democratic government. Well, we are all anxious to punish the wicked. None of us desires that wickedness should go unpunished, but at the same time I think it is one of the fundamental principles of criminal jurisprudence, in fact one of the very foundations of a stable society, that even the wicked must be punished in certain ways. When Skeffington was shot, I remember the whole world was shocked. Roger Casement had an open trial. But if Roger Casement, wicked man as he was, criminal as he was and thought so by all reasonable people, had been shot as Skeffington was shot, I beg leave to say the world would have been shocked. Even Roger Casement had his rights; he must be tried in open Court and must be allowed an opportunity of clearing his character. Now even in war when all humanity throbs with excitement and peril and when nobody thinks of any thing except how to conquer the enemy, even then, my Lord, there are the laws of war, you have got to play the game. The Germans have been condemned for nothing so much as for the callous way in which they treated all the laws of war. I am sorry to think that in some cases England has had to follow Germany, very reluctantly indeed; but any way there are laws not unknown to ancient chivalry, illustrated by the life of Bhishma, laws which, even in war, may not be violated without incurring the serious reprobation of history. When there are criminals abroad in a country there are certain ways in which they ought to be brought to book. You ought not to lay them by the heels and punish them in ways that will shock the sense of justice, in ways that will make the innocent feel that there is no law in the land, in ways that will make honest, virtuous and public-spirited work impossible. The price even for the extinction of wickedness that is demanded then is far too high. Much better, it seems an ungracious thing to say, much better that a few rascals should walk abroad, than that the honest man should be obliged, for fear of the law of the land, to remain shut up in his house, to refrain from the activities which it is in his nature to indulge in, to abstain from all political and public work merely because there is a dreadful law in the land. I was astonished to hear Sir Verney Lovett tell us that it is not enough to indulge in conventional regrets in this Council. I wonder very much whether he will agree to retain and repeat the word 'conventional.' When Hon'ble Members here get up and reprobate wicked deeds, I take leave to say that they do not do it in a merely conventional manner. I take it that we all abhor wickedness as much as Sir Verney Lovett or any member of the Rowlatt Committee does. May I turn back and say that the proposals made by the Government betray a somewhat callous disregard of liberty. I will take back the word 'callous', the moment anybody says that it is too harsh, and I take it that the Hon'ble Sir Verney Lovett will take back his 'conventional'

The Hon'ble Sir Verney Lovett:—"May I explain, my Lord? What I meant by 'conventional' was simply this. I meant that expressions of regret for calamities and for tragic occurrences which are not followed by serious attempts to secure that such calamities and such tragic occurrences shall not happen again, seem to me to be worth nothing more than conventional expressions of regret."

The Hon'ble Mr. Srinivasa Sastri:—"Then, my Lord, the Hon'ble Sir William Vincent told us that those laws are intended only to purify politics, not to suppress but to purify politics. I have taken down his very words 'not the suppression but the purification of politics is our aim,' he

said. Ah! if in this world good intentions always bore fruit it would be very well and this would be a splendid world to live in. The history of legislation, both social and political, is strewn with instances of miscarriage of excellent intentions. Laws intended to cure poverty have aggravated it, multiplied it; laws intended to cure crime may run very well in the same unhappy direction; and I take leave to say to the Hon'ble Sir William Vincent that the laws now placed before us which are aimed at purifying politics may come dangerously near suppressing them. You cannot place on the Statute-book such drastic legislation without putting into the hands of over-enthusiastic executive officers what I consider short cuts to administrative peace. As I said before, even peace in administration, valuable as it is, can be sought in wrong ways. You provide them with short cuts to administrative peace and there is no administration that is able to resist the temptation to run across these short cuts when the only royal road to peace is the right road, and the righteous road. Now anarchists, it is said, do not want reform. They spurn these political concessions. Oh! yes, there are two ways in which perhaps this expression is intended to be understood. It means in the first place that the crime with which we have now to deal in Bengal, the Punjab and elsewhere, is partly only political, and partly it has become ordinary. I much regret that, so far as I am able to judge of the matter that has been placed before us, there is very considerable truth in the observation. I do think, my Lord, that however this unfortunate episode has begun, though it may have begun in pure political methods, a part of it perhaps has now passed into what must be described as chronic crime. That is so, but I still think that a good part of it is political, and for political crime, while such repressive laws as may be necessary ought to be put in force, the principal remedy is still political amelioration. But perhaps there is another sense in which this has got to be understood. The anarchist does not want political reform. That is too true. But why? That is the thing we have got to understand. The anarchist is afraid that the friction that he wants in the land, that the excitement in which he continually wishes people to live, will die down if the ways of Government become conformable more and more to democratic ways. If responsible government is granted, if ameliorative measures of one kind or another are passed, it is possible that the people will lie quiet for a time and the anarchist will not find plenty of room for his work. He wants that in this country dissatisfaction and discontent must assume more and more aggravated forms. Quite so, but what is the reason for this abnormal state of things. The anarchist is a morbid creature; the revolutionary, the bomb-thrower, even where their motives are honest, that is to say, even where their motives are unselfish, are blind. In my opinion they dwell too much on the unfavourable aspect of things. They read contemporary affairs wrong, they read history wrong; they see no hand of righteousness anywhere. My Lord, political remedies do not satisfy them, and, because they want the final remedy of destruction, all these things seem wrong to them. But, because the anarchist is in this unfortunate condition of mental derangement, are we to say, since these people are not going to be satisfied by political concessions, we will not think of them; we will only apply the rule of law to them? That is not the way, I think, that sound statesmanship should go about the business. We should offer them satisfying measures of political emancipation. But, after all, it is not these anarchists that have to be satisfied. It is the general atmosphere which feeds anarchy that we have got to cure; and, when the anarchist finds that he gets no sympathy anywhere, that he cannot propagate his wicked doctrines in a soil where there is contentment and political prosperity, he will naturally die, even if the long arm of the law does not get at him.

"There is one thing that I should like to say before I sit down. The Hon'ble Sir Verney Lovett quoted to us on more than one occasion words of Mr. Gokhale. Now it is very easy for me to quote Mr Gokhale back again for the edification of the Hon'ble Sir Verney Lovett and the Members of the Council. We can all quote passages at each other; we can unearth classical quotations; we can ransack Greek, Latin and Sanskrit for passages of great pith and moment and applicability to the present conditions. But what we have got to see is how far we are prepared to act upon the one side and upon the other up to the spirit of the teachings for which we are all striving.

"The Hon'ble Sir William Vincent said that we are now undergoing a test. Oh! yes,—.....

The Hon'ble Sir William Vincent:—"May I correct the Hon'ble Member? What I said was that their attitude on this Bill would be regarded by many both in this country and outside it as a test of their capacity."

The Hon'ble Mr. Śrinivasa Sastri:—"Yes, it would be regarded by a few people."

The Hon'ble Sir William Vincent:—"By many."

The Hon'ble Mr. Srinivasa Sastri:—"Not necessarily by the Hon'ble Sir William Vincent

The Hon'ble Sir William Vincent:—"No."

The Hon'ble Mr. Srinivasa Sastri:—"As a test of our capacity to stand any measure of responsible government, are the Members of this Council going to face the unpopularity, the odium, of passing a repressive measure which has become necessary? That was the question asked. Now, my Lord, I am no member of the Indian Civil Service; I have not been schooled in the stern discipline of that service; I am perhaps too tender by nature. It may be that I and several others like me may be unable to face the storm of unpopularity, but I should like to say—and I am not ashamed of it—that we certainly do not think that the sign of strength, that the sure proof that you are a born administrator, consists in courting unpopularity and defying public opinion. I am not made that way. I do not think I lose by that. But at the same time when the stern call of duty comes, when the requirement of truth is laid on me, when the best interests of my country, as I understand them, require it, I am perfectly prepared to submit to unpopularity. If necessary, I am prepared to go through the fire of public odium. But it has got to be proved to me that it is necessary. I will not, for the mere wantonness of it—merely to demonstrate that I am fit to be in charge of a district or even of a division—court unpopularity for these reasons.

"Now, we have been subjected to many tests. We have given our consent to many repressive laws by now—the Press Act, the Defence of India Act. During the war we were hourly on our trial. We have given 100 millions, we have given this, we have given that. The other day we were told that the gift of 45 millions would also be a matter of test. We submitted to it. What test has been really applied to us to which we have not cheerfully submitted? I can hardly think of one. Bidden to bring the milk of a beast of prey, we have brought a jugful of milk of the tigress. Are you going to throw it aside and say, 'Bring the milk of the male tiger?' That is not fair. Yet, many people in England, testing us probably by this severe standard, may pronounce us not sound, not fit for responsible government. But I do hope, my Lord, that there will be two or three clear-sighted, two or three shrewd people even in England at this time, to say that the Indian Civil Service, the administrators of India,—the Executive, are really on their test. They profess to be prepared in India for a very early beginning of responsible government, when they would be willing not to impose, as they do, their will on the legislature but to take the will of the legislature and carry it out,—when they will be the instruments of the legislature and not its masters. Are they preparing for that time by carrying, in the teeth of the opposition, unanimous and unsparing of their Indian colleagues,—this measure through? Whom have you behind you now amongst Indians? The tragic story of India may be summed up in these words, that you have governed all these centuries in India in isolation, without having any responsible section of public opinion behind you. Now at this supreme hour, whom have you behind you? No section of public opinion supports you. The nominated members have not given their blessing to this Bill. The zamindar members have not given

their blessing. The lawyer members will have none of it. The members of commerce will have none of it. And yet the Hon'ble Sir George Lowndes told us, 'We must carry this legislation through because we are satisfied that it is very right: we should have been glad of your help, but with our sense of responsibility we must go on even without your help, however much we would have liked it.' I admire the courage of the Hon'ble the Law Member. I admire the candour with which he said, 'We have the responsibility to-day: you have none of the responsibility.' We realise that position. We have none, my Lord, of the responsibility for this legislation, and I therefore refuse to believe when the case is put correctly before the public opinion that they will say, as the Hon'ble Sir William Vincent seemed to think some sections of the English public might, that we had responsibility and shirked it. We have none.

"Now there is only one more remark, my Lord, I must make and that in justice to the feeling in the country of which for the moment I am the spokesman. I do not think the Hon'ble the Law Member could have meant all that he said when he said that some of us were indulging in threats of agitation. I venture to think that no one here who has spoken against the Bill indulged in anything which might truthfully be described as a threat of agitation. None of us, certainly none of the Moderates, I take leave to say, has power to go and stir up a violent agitation in the country. It is impossible. The agitation must be there already. The heart must be throbbing if any words that we use here can have a possible effect on the general political atmosphere. The agitation is there. I wish to assure my official colleagues that none of us has had a share yet in this business, but if our appeals fall flat, if the Bill goes through, I do not believe there is anyone here who would be doing his duty if he did not join the agitation. That is not a threat. I take leave to think that is by no means a threat. Anyhow I am the best judge of my own mind, and I do not indulge in any threat. I have yet borne no part in this agitation, but if everything goes wrong, if we are face to face with this legislation, how it is possible for me with the views that I hold to abstain from agitation, I for one cannot say."

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, may I suggest that the Council now adjourn under rule 3 of the Rules of Business?"

His Excellency the President:—"No, the Council will sit until this is finished."

The Hon'ble Mr. V. J. Patel:—"Your Excellency, I do not think it is necessary for me to detain the Council for more than a minute or two. So far as we non-official Members are concerned, we have made our position perfectly clear. We have with one voice made it clear to you that we are opposed to this measure. We have made it clear that the passage of this measure will put an end to all constitutional agitation in the country. We have also made it quite clear that the passage of this measure will affect the reception of the proposed reforms. 4-35 P.M.

"We have also made it clear that the passage of the measure will, or is likely to, affect the satisfactory passage of the Reform Bill. We have left no stone unturned to convince your Excellency and your Excellency's Government that such a tremendous and unprecedented agitation will follow the passage of this Bill that perhaps it will be difficult for Government to meet the situation. In spite of that, if your Excellency's Government with the assistance of the official majority choose to pass the measure, the responsibility is yours. At the last Simla Session my Hon'ble friend, the Finance Member, told us that the responsibility for consenting to or refusing the contribution of 45 million pounds would rest with the non-official Members. May I say the responsibility for the passage of this Bill and the resulting consequences will lie with the official Members. My Hon'ble friend, Mr. Sastri, just now told us that we non-official Members in this Council have no responsibility. I wish he had realised that situation when he voted for the 45 millions." tical

The motion was put and the Council divided as follows :—

Ayes—22.

The Hon'ble Sir Gangadhar Chitnavis.
Babu S. N. Banerjea.
Raja of Mahmudabad.
Dr. T. B. Sapru.
Pandit M. M. Malaviya.
„ Mr. S. Sastri.
„ Mr. B. N. Sarma.
„ Mir Asad Ali, Khan Bahadur.
Mr. V. J. Patel.
Mr. M. A. Jinnah.
„ Sir Fazulbhoy Currimbhoy.
Rai Sitanath Ray Bahadur.
Raja Sir Rampal Singh.
Rai Krishna Sahay Bahadur.
Raja of Kanika.
Mr. Mazharul Haque.
Khan Bahadur Mian Muhammad Shafi.
Khan Zulfikar Ali Khan.
Mr. G. S. Khaparde.
Rai B. D. Shukul Bahadur.
„ K. K. Chanda.
Maung Bah Too.

Noes—35.

His Excellency the Commander-in-Chief.
The Hon'ble Sir Claude Hill.
„ Sir Sankaran Nair.
Sir George Lowndes.
Sir William Vincent.
„ Sir James Meston.
Sir Arthur Anderson.
„ Mr. W. A. Ironside.
„ Sir Verney Lovett.
Mr. H. F. Howard.
Sir James DuBoulay.
Mr. A. H. Ley.
Mr. H. Sharp.
Mr. R. A. Mant.
Major-General Sir Alfred Bingley.
Sir Godfrey Fell.
Mr. F. C. Rose.
„ Mr. C. H. Kesteven.
„ Mr. D. de S. Bray.
Lieutenant-Colonel R. E. Holland.
Surgeon-General W. R. Edwards.
Mr. G. R. Clarke.
Mr A. P. Muddiman.
„ Mr. C. A. Barron.
Mr. P. L. Moore.
Mr. M. N. Hogg.
„ Mr. T. Emerson.
Mr. E. H. C. Walsh.
Mr. C. A. Kincaid.
Sir John Donald.
Mr. P. J. Fagan.
Mr. J. T. Marten.
„ W. J. Reid.
W. F. Rice.
„ H. Moncrieff Smith

The amendment was, therefore, negatived.

The Hon'ble Mr. Surendra Nath Banerjea :—"My Lord, I have already moved my amendment. I need not make a speech. I pray that the vote may be taken." The motion was put and the Council divided as follows :—

Ayes—21.	*Noes—34.*
The Hon'ble Sir Gangadhar Chitnavis.	His Excellency the Commander-in-Chief.
„ Babu S. N. Banerjea.	The Hon'ble Sir Claude Hill.
„ Raja of Mahmudabad.	„ Sir Sankaran Nair.
„ Dr. T. B. Sapru.	„ Sir George Lowndes.
„ Pandit M. M. Malaviya.	„ Sir William Vincent.
„ Mr. S. Sastri.	„ Sir James Meston.
„ Mr. B. N. Sarma.	„ Sir Arthur Anderson.
„ Mir Asad Ali, Khan Bahadur.	„ Mr. W. A. Ironside.
„ Mr. M. N Hogg.	„ Sir Verney Lovett.
„ Sir Fazulbhoy Currimbhoy.	„ Mr. H. F Howard.
„ Rai Sita Nath Ray Bahadur.	„ Sir James DuBoulay.
„ Maharaja Sir M. C. Nandi.	Mr. A. H. Ley.
„ Nawab Ali Chaudhuri, Khan Bahadur.	Mr. H. Sharp.
„ Rai Krishna Sahay Bahadur.	Mr. R. A. Mant.
„ Raja of Kanika.	Major-General Sir Arthur Bingley.
„ Mr. Mazharul Haque.	Sir Godfrey Fell.
„ Khan Bahadur Mian Muhammad Shafi.	Mr. F. C. Rose.
Khan Zulfikhar Ali Khan.	Mr. C. H. Kesteven.
Mr. G. S. Khaparde.	Mr. D. de S. Bray.
Rai B. D. Shukul Bahadur.	Lieutenant-Colonel R. E. Holland.
Maung Bah Too.	Surgeon-General W. R. Edwards.
	Mr. G. R. Clarke.
	Mr. A. P. Muddiman.
	Mr. C. A. Barron.
	Mr. P. L. Moore.
	Mr. T. Emerson.
	Mr. E. H. C. Walsh.
	Mr. C. A. Kincaid.
	Sir John Donald.
	Mr. P. J. Fagan.
	Mr. J. T Marten.
	Mr. W. J. Reid.
	Mr. W. F. Rice.
	Mr. H. Moncrieff-Smith.

The amendment was, therefore, negatived.

The Hon'ble Mr. Kamini Kumar Chanda :—"My Lord, I have already made my submission in this matter and I do not wish to move my amendment. I, therefore, withdraw it with your permission."

The amendment was by leave withdrawn.

The Hon'ble Sir William Vincent :—"I understand that your Excellency wishes to allow me an opportunity of replying on the general motion. I do not know if any other Hon'ble Member wishes to speak first." 5 P.M.

His Excellency the President :—"We now come to the general resolution that this Bill be referred to a Select Committee. Does any Hon'ble Member wish to speak. After Sir William Vincent speaks the discussion will close."

The Hon'ble Sir William Vincent :—"My Lord, it is now my duty to reply to the Council on the main motion with which I opened this debate. Before I do so, I should like to acknowledge the very great ability and force with which the criticisms directed against this Bill have been put. I submit, however, that the dangers to be apprehended from this legislation have been overcoloured by many of the Members including the Hon'ble Mr. Sastri. I do not myself think that it can be suggested that any action is now being taken under any of the emergency war enactments to suppress legitimate political

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movements, or that any movements other than purely seditious ones will fall within the scope of the Bill. I do not think for instance that there is any case now in Bengal, and it is there that most of these revolutionary crimes have taken place in which it can be suggested that persons are interned or placed under restrictions by reason of their taking part in politics. The men upon whom restrictions have been placed are well-known criminal revolutionaries. Their cases have been investigated by no less an authority than Sir Narayan Chandavarkar, who was himself formerly a Judge of the Bombay High Court, in conjunction with a Judge of the Calcutta High Court. It has never been suggested that action has been taken against any of these men because they are mixed up with politics, and it is far from our intention that anything of that kind should occur under this Bill. If we are able to put in any provisions which will prevent any possibility of this, my Lord, we are perfectly ready to do so, though we believe the possibility is already sufficiently provided against. Turning to the detailed criticisms of the Bill, I am first told that the remedy which we propose is ineffective, that reforms are what are needed and not repression. My Lord, my answer is the answer previously given, that this revolutionary movement is inconsistent with any political programme or organised form of government. We were then asked to be content to hope and pray that these men will reform themselves.....

The Hon'ble Pandit Madan Mohan Malaviya:—"Not entirely."

The Hon'ble Sir William Vincent:—"Well, my Lord, as we were lately told very pertinently by a Local Government administration is a practical matter and we cannot afford to rely on hope and prayer alone in a matter of this kind.

"We have also been told that the Bill will not effect what is required. Well, the answer to it is to be found in the figures and facts which I cited to you at the beginning of this meeting. It has been admitted indeed by more than one Member of this Council that the measures which we have at present in operation have been singularly successful in coping with this political crime. We did try to carry on with the assistance of the ordinary law for some years, and the result was a steady failure to deal with these offences. Every method of conciliation has also been tried from time to time, and even now is being tried, and I am glad to say that in individual cases they are fairly successful. We have a number of men who have been reformed and turned away from their evil courses, but this alone is not sufficient, and I submit to the Council that it cannot be urged with any force that the remedy we now propose is likely to be ineffective.

"We were then told that the framers of the Report itself did not suggest legislation immediately. My Lord, let me read paragraphs 178 and 179 of the Report, which run:—

'To postpone legislation till the danger is instant is in our view to risk a recurrence of the history of the years 1906-17.....'

'In these circumstances we think that appropriate provisions should be framed and enacted, but should not come into force save upon a notification by the Governor General in Council.'

Who can say in the face of this quotation that the Report did not recommend immediate legislation. Again, in paragraph 187 the authors of the Report say, 'We have been forced to the conclusion that it is necessary in order to keep the conspiracies already described under control in the future to provide for the continuance after the expiry of the Defence of India Act of some of the powers which that measure introduced in a temporary form.

"I submit that, in these circumstances, it is idle to say that the framers of the Report did not recommend legislation. Whether they acted wisely or not is of course another matter.

"Again, it is said that revolutionary crime has now ceased and so there is no need for any further legislation of this kind. Well, my Lord, what did Sir

Henry Wheeler say in a recent speech:—'We have unfortunately the best reason for going on with what checks have been imposed. Men are still abroad known to be leaders in the revolutionary movement. They are still actively engaged in enlisting boys for their own ends and endeavouring to foment trouble.' Here, again, is a letter which I intended to read in my opening speech in which after advocating various violent crimes such as looting, arson, assaults on Government officers, and specifically encouraging such offences as murder and dacoity, the writer concludes thus:—

'Some are of opinion to put a stop to all sorts of violent work till the detenus and State workers come back. Let the old workers come back and we will plan our future, but not till then.'

I think that indicates pretty accurately what the state of mind of some of these men is, that they are waiting for the expiration of the present law in order to renew in a more sinister form their present activities.

"The next argument that I heard was that the legislation was inopportune in that it would prejudice reform and should not synchronise with the Peace Conference now being held. I have explained, my Lord, as best I could, that this legislation has no connection with reforms or politics at all. We are as much interested in reforms as any one else. We have done the best we can to forward the cause of reform and why should we now introduce this legislation in order to prejudice it if we thought this result possible. My own view is, that any outbreak of revolutionary outrages, any serious recrudescence of this form of crime would do more to endanger the cause of reform than any other thing I can think of.

"Then it is said, if this crime is still prevalent Government should use the Defence of India Act as long as possible, and then should ask your Excellency to pass an Ordinance extending that Act for six months. In my opinion the continuance of a war measure after peace was declared under the emergency powers of your Excellency would be an abuse of power, and if we had attempted to take that course, we should have been attacked, and with justice, in this Council for this abuse of an emergency power. Further, I believe the use of it would have accentuated opposition when later a Bill was brought, as would have been necessary, before this Council. We do not want to use war measures after the war is over. The Bill I now introduce is not a war measure nor is it co-extensive with the Defence of India Act, it is a Bill to prevent sedition.

"I am told that the words used by Sir Reginald Craddock, when he introduced the Defence of India Act, preclude the Government from this measure. My Lord, I deny that. I say the measure he then proposed was a special war measure for the period of the war, but it cannot be said that it precluded the Government of India from introducing some years later a measure of a separate character with different provisions, to deal with anarchical crime, which the Defence of India Act was not specifically passed to deal with.

"I have been asked to postpone consideration of this measure, for varying periods. Well, in my judgment I can only say that delay would be fatal There must be time to examine this Bill, and we are willing to give that time, but if by sudden events the Defence of India Act was to expire and we had no legislation to take its place, then I submit that the consequences would be disastrous. All the ground that we have gained now in the suppression of this anarchical movement would be lost. Our police efficiency, which has been so seriously, and in my opinion so unfairly, attacked, would be destroyed; the services now employed in suppressing this seditious movement would be so discouraged that I think it would be impossible to expect good work from them and law and order would be sacrificed. We should also not be justified in delaying the passing of this measure, in that the delay would force us to use the Defence of India Act, which is a war measure, in times of peace. I am anxious myself that it should not be so used and that we should not be accused of using a measure designed for war for entirely different purposes. To suggest that this measure is due to police inefficiency, my Lord, is, I think, ungenerous and a grudging tribute to men who have done excellent work. On the other hand, it might well be said, if failure to bring these

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men to trial is what we are accused of, that it is due a great deal to a lack of moral courage, to a lack of that sense of civic responsibility which is really essential in prosecutions of this kind. I will read to the Council what Sir Narayan Chandravarkar and Mr. Justice Beachcroft said:—'Before the Defence of India Act was brought into force the fair trial of a person accused of revolutionary crime had been rendered practically impossible by the murder of approvers, witnesses, police-officers and law-abiding citizens, suspected by revolutionaries of having given information to or otherwise assisted the police: a situation of terrorism was thus created.' My Lord, it was the failure to face this danger which has really led to the necessity for these special measures.

"Lastly, it was said that the measure was an unfair infringement, of the liberties of the subject. My Lord, I admit that it is an inffingement, though I know that if I make that admission, I am liable to attack and criticism of the nature delivered now by Mr. Sastri. At the same time, it is useless to minimise what is clearly a fact. But the Government of your Excellency, many of the Members of which are professional lawyers, are the last people in the world who would be willing to impose such restrictions on the liberty of the subject, unless they were satisfied that it was necessary. Who were the members of the Rowlatt Committee? The great majority were men of the same class. Would they have suggested such a course if they had thought any other measure was possible? Have any other practical measures for meeting this difficulty been suggested to this Council? I submit none. For abnormal crime you must have abnormal measures. In fact, there is no remedy other than the measures now proposed so far as we know which has any prospect of success, and I think that this was realised by some Members of this Council, for at least one Member said, 'if the circumstances do not improve in future, or if they get worse, I myself will support you in this measure or a Bill of the same nature.'

"Then I am told that the measure is capable of abuse, that innocent men may be arrested, that constitutional agitation will be stopped, that the decision of investigating authorities will be reached on the evidence of police reports alone and that these committees are really a safeguard of no value. Well, my Lord, every law may be abused. It will be our duty to do the best we can to see that it is not abused. But to undervalue the work of these investigating authorities and to suggest that men will be interned on police reports alone is to overlook plain facts. I have before me now a very careful report from Mr. Justice Beachcroft and Sir Narayan Chandravarkar on a large number of cases, and I defy anybody to say that they proceeded on police evidence alone or otherwise than after the fairest and most scrupulous examination of the actual facts and materials against each person.

"I am then told that we must expect the most terrible agitation if this Bill passes into law. My Lord, this card of agitation has been played a little too much recently, but I see no reason to minimise the prospect of considerable agitation over this Bill. It will therefore be the Government's duty to endeavour to meet any reasonable apprehensions by such changes in the Bill as are necessary without destroying its effectiveness. If there is any way, as my Hon'ble Colleague said just now, in which we can modify this Bill, without destroying the effectiveness of the machinery, we shall be quite prepared to do it. And I hope that if we are able to meet the Hon'ble Members of this Council in a reasonable manner they will assist us in allaying any agitation that may arise over this matter.

"My Lord, I now wish to turn to a very serious allegation or rather to a number of serious statements which were made by the Hon'ble Mr. Malaviya. He began by saying that the trouble in the Punjab was caused by the *Komagata Māru* riot at Budge Budge. He proceeded to attack the conduct of Government and of Government officers in connection with that occurrence. My Lord, I myself was one of a Committee who inquired into this affair in conjunction with two Indian non-officials and two Europeans, one a Judge and one an executive officer, now a Member of this Council. All I can say is that our findings in regard to that riot do not corroborate the allegation of the Hon'ble Member, and that they were never, as far as I am aware, challenged by him or anyone else

The Hon'ble Pandit Madan Mohan Malaviya :—" No, because it was during war time ; we did not want to raise a discussion "

The Hon'ble Sir William Vincent :—" It is not always that the Hon'ble Member has been so sparing of Government, my Lord ; even at the beginning of the war. I repeat that our findings were not challenged by anybody. Similarly the allegation that the trouble in the Punjab began with the *Komagata Maru* incident is incorrect : it is contradicted by the facts stated in the Rowlatt Committee's Report which Members of Council now have before them, as well as by Sir Michael O'Dwyer's speech in Council last September. I need only refer to two incidents which occurred before the Budge Budge riot to disprove this allegation. One was the attempt to assassinate Lord Hardinge. That was some years before the *Komagata Maru* incident. And there was, I believe, another outrage in Lahore in 1913. The revolutionary movement had in fact gained some strength before the *Komagata Maru* incident occurred at all. But a more serious allegation was made later, an allegation that the Government was responsible for the outbreak of revolutionary crime in Bengal

The Hon'ble Pandit Madan Mohan Malaviya :—" No, no."

The Hon'ble Sir William Vincent :—The Hon'ble Member wishes to correct his statement. I can well understand that. I say he insinuated throughout that the action of Government was responsible for revolutionary crime in Bengal

The Hon'ble Pandit Madan Mohan Malaviya :—" If my Hon'ble friend will not refer to the whole of what I said on this point, it will be wrong and misleading. I described how there was no revolutionary crime in Bengal until 1905, I described how the thing grew and I described the causes, temporary and permanent, which led up to it "

The Hon'ble Sir William Vincent :—" My Lord, I leave to the Council to judge. Members heard the words used as well as I did. And I maintain that his insinuation throughout was that the Government was responsible for revolutionary crime in Bengal ; there can be no doubt on that point. Well, my Lord, was it Government who sowed the seed of sedition in the minds of these young men ? Was it Government who, by malignant misrepresentation of the action and motives of Government, by persistent vilification of the authorities watered that seed ? Was it Government who instigated neurotic youths to crime ? Was it Government who, when steps were taken to check this crime, stood aside in holy horror at any attempt to exorcise this demon which they had raised ? What answer is there to that, my Lord ? There can be only one answer. It was not the Government, and I repeat what I said last Session, the responsibility for much of this crime rests with those political leaders who have aroused visions in the minds of non-politically-minded persons, have incited them to evil deeds and have entirely failed to quell the evil passions which they have aroused. They have aroused these passions and have then stood aside, and the Government has had to bear the brunt.

" Then, my Lord, the Hon'ble Member went on to disclaim all veiled or unveiled sympathy with these anarchists, and at the same time to speak of them as misguided youths guilty of unconstitutional action. My Lord, these are the euphemisms used to describe murders, dacoities, thefts and similar dastardly crimes

The Hon'ble Pandit Madan Mohan Malaviya :—" Does the Hon'ble Member seriously include dacoity and murder in unconstitutional methods ? I was speaking of one kind of method which grew up in Bengal after constitutional agitation had failed."

The Hon'ble Sir William Vincent :—" We have been discussing revolutionary crime all day, and the worst words the Hon'ble Member could find to define it were ' unconstitutional action,' and the words that he used to describe criminal anarchists are ' misguided youths.' And yet he professed—and rightly I have no doubt in his intentions—to have no sympathy

with these men. I do not suggest that he has any sympathy with these men, but I do suggest, however, that by his attitude, by language of this kind, crime of this kind is encouraged. My Lord, if we have things misdescribed in this way you will shortly have the attempt on Lord Hardinge's life described in much the same style as an unfortunate incident.

"I am told by the same Hon'ble Member that India's war effort has been forgotten, and that this Bill is the reward for India's loyalty. I think that was the language one Hon'ble Member used. My Lord, our view is that India's war effort would have been impossible unless order had been preserved, and we shall be only too glad to reward and assist those who have helped us in this crisis, but I do not think that because we seek to take action against revolutionaries it can be said that we are forgetful of India's loyalty. The revolutionaries did nothing in the war; they have not helped. Many, indeed, conspired with the King's enemies. Those who have helped in the war gladly shall we reward, gladly shall we assist, as your Excellency has already said. We were then told that the Hon'ble Member assisted in the passing of the Defence of India Act, and he seemed rather to take credit for having taken an active part in India's war effort. Well, my Lord, I was here when the Defence of India Act was passed, and I think some other Members of this Council were here also, and they know what the attitude of the Hon'ble Member was towards that measure. My recollection is that he introduced or gave notice of no less than 20 amendments to that Bill.

The Hon'ble Pandit Madan Mohan Malaviya:—"Yes, quite so, but still I gave support to the measure."

The Hon'ble Sir William Vincent:—"Yes, my Lord, support of a kind much like the sympathy professed by a certain Member of this Council towards the Education Bill which I heard Mr. Gokhale describe in this Council as of no value to the Government or anybody else.

"I will now leave Mr. Malaviya and come back to the Bill. I put it to the Council very earnestly that there has been no serious attack on the findings of fact that these revolutionary conspiracies exist, and that the men are now ready and actually preparing to renew their activities at the earliest opportunity. No other remedy of a practical nature has been suggested to meet this form of crime. Is it not then reasonable that I should press the Members of this Council to co-operate with the Government in this measure to cope with this evil?

The Hon'ble Mr. Surendra Nath Banerjea.—"What about Regulation III of 1818?"

The Hon'ble Sir William Vincent:—"I am quite sure that the Hon'ble Member would be the last person to advocate an indiscriminate use of Regulation III of 1818 in cases in which it is proposed to apply the less stringent provisions of the Bill. At the same time, as I said before, I see the difficulty in which my Hon'ble friend and other Members of this Council are placed. I am anxious to meet them, and I am impressed by the criticisms of the moderate non-official Members in this Council. I was told that the Government neglects the opinion of the Council and pays no attention to it. Far from it. We are anxious to secure the support of the Council and to secure it I am prepared to make such amendments as I can in this Bill without impairing the efficiency of the machinery which is necessary to enable the Government to deal effectively with this anarchical movement

The Hon'ble Mr. Surendra Nath Banerjea:—"Will you kindly make the Bill temporary?"

The Hon'ble Sir William Vincent:—"That is a question which will have to be considered; but in the meantime I ask the Council to accept

the principle of the measure as necessary and to support the Government in a matter of the greatest moment and importance."

The ayes have it.

The motion that the Bill be referred to Select Committee was then put and agreed to, and on the motion of the Hon'ble Mr. Patel, the Council divided as follows :—

Ayes-36.	*Noes-21.*
His Excellency the Commander-in-Chief.	Hon'ble Babu S. N. Banerjea.
Hon'ble Sir Claude Hill.	Raja of Mahmudabad.
" Sir Sankaran Nair.	Dr. T. B. Sapru.
" Sir George Lowndes.	Pandit M. M. Malaviya.
" Sir Wm. Vincent.	Mr. S. Sastri.
" Sir James Meston.	Mr. B. N. Sarma.
" Sir Arthur Anderson.	Mir Asad Ali, Khan Bahadur.
" Sir Gangadhar Chitnavis.	Mr. V. J. Patel.
" Mr. W. A. Ironside.	Mr. M. A. Jinnah.
" Sir Verney Lovett.	Sir Fazulbhoy Currimbhoy.
" Mr. H. F. Howard.	Rai Sitanath Ray Bahadur.
" Sir James DuBoulay.	Raja Sir Rampal Singh.
" Mr. A. H. Ley.	Rai Krishna Sahay Bahadur.
" Mr. H. Sharp.	Raja of Kanika.
" Mr. R. A. Mant.	Mr. Mazharul Haque.
" Major-General Sir Alfred Bingley.	Khan Bahadur M. M. Shafi.
" Sir Godfrey Fell.	Khan Zulfiqar Ali Khan.
" Mr. F. C. Rose.	Mr. G. S. Khaparde.
" Mr. C. H. Kesteven.	Rai B. D. Shukul Bahadur.
" Mr. D. de S. Bray.	Mr. K. K. Chanda.
" Lt.-Col. R. E. Holland.	Maung Bah Too.
" Surg.-Genl. W. R. Edwards.	
" Mr. G. R. Clarke.	
" Mr. A. P. Muddiman.	
" Mr. C. A. Barron.	
" Mr. P. L. Moore.	
" Mr. M. N. Hogg.	
" Mr. T. Emerson.	
" Mr. E. H. C. Walsh.	
" Mr. C. A. Kincaid.	
" Sir John Donald.	
" Mr. P. J. Fagan.	
" Mr. J. T. Marten.	
" Mr. W. J. Reid.	
" Mr. W. F. Rice.	
" Mr. H. Moncrieff Smith.	

The motion was, therefore, agreed to.

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SGPI, Delhi—178 LD—20-8-19—60.

LEGISLATIVE DEPARTMENT.

Reprinted

WE, the undersigned, Members of the Select Committee to which the Bill to make provision in special circumstances to supplement the ordinary criminal law and for the exercise of emergency powers by Government was referred, have considered the Bill and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

2. Before we proceed to set out the modifications of detail which we have made in the Bill, we may state at once that we do not propose to refer to the numerous amendments which were suggested in the Bill in so far as they were destructive of the general principles of the Bill. Amendments of this kind should be brought forward in Council which is the appropriate arena for their discussion.

3. An apprehension that has been widely expressed in connection with the Bill under our consideration is, that its provisions if they became law might be used or rather abused for the purpose of suppressing legitimate political activities. The Hon'ble Member in charge of the Bill has on several occasions repudiated any such intention in unequivocal terms. We, however, consider that, in order to avoid the possibility of such a view being reasonably entertained, the Bill itself should bear clearly impressed on its face the refutation of such a suggestion. With this object before us, therefore, we have made several amendments to make it clear that, as the long title states, the Bill is a Bill to cope with anarchical and revolutionary crime. These amendments will be found in the long title, the preamble, the short title, clause 3, clause 20 and clause 32, in all of which provisions, with what might possibly be considered excessive caution, we have reiterated words which, in our opinion, place the object and scope of the Bill beyond all doubt.

4. The Bill, as originally drawn, purported to make a permanent addition to the Statute-book. The decision which was announced in Council that it would be limited in duration to a period of three years from the termination of the war, which we have given effect to by the new sub-clause (3) of clause 1, has enabled us to revise certain other provisions of the Bill, notably the important clause 26. The duration of the Bill, moreover, supplies an automatic limitation in regard to the operation of certain of its provisions, a question which otherwise might have called for our anxious consideration.

5. We will now refer to the detailed amendments which we have made in the Bill in so far as they have not already been disposed of by the foregoing remarks.

6. We have omitted the definition of "offence against the State" in clause 2, as the term only occurred in clause 20, and for the reason which we give in dealing with that clause has now disappeared from the Bill.

7. *Clause 3.*—We have assimilated the language of this clause with that of clause 32, as we think these clauses should correspond as closely as may be in the nature of the declaration they require.

8. *Clause 4.*—It seems to us desirable that once an accused has been committed for trial, no order should be made under this section, and we have accordingly inserted the words "or the Court of Sessions" so as to exclude cases where commitments have been made as well to that class of Court as to the High Court. In this respect we follow the precedent of the Criminal Law Amendment Act of 1908. We think further that the accused is entitled to have notice of the particulars which the prosecution intend to prove against him, and we have amended the wording of sub-clause (3) to give effect to this view.

9. *Clause 6.*—The new proviso to this clause, which replaces that in the Bill as referred to us, must be regarded as a compromise between conflicting influences. On the one hand, we recognise that the importance of a local trial may in particular circumstances only be fully realised by the executive Government; on the other hand, we are averse to invoking the authority of the Governor General in Council in such a matter. The provision we suggest seems to us a reasonable *vid media*.

10. *Clause 8.*—We have slightly amended this clause so as to require the prosecutor to open his case thus following the lines of section 286 of the Code of Criminal Procedure.

11. *Clause 9.*—In deference to the wishes of some Members of the Committee, we have extended the period of adjournment, which is provided for by this clause, from ten to fourteen days.

12. *Clause 10.*—We think it desirable that a full record of the evidence should be made, but not that it should necessarily be recorded by the Court itself. The amendments made in this clause are intended to give effect to this view.

13. *Clause 12.*—We have amended the provisions of this clause to bring it more closely into line with the provisions of 61 and 62 Victoria, c. 36, and have included in the clause the provisions of that Act prohibiting comments by the prosecution on the failure of an accused to give evidence, and providing that if he does give evidence he shall do so from the witness-box. These provisions are probably of considerably less importance in a trial such as that which will be held under the Bill by three High Court Judges, but as their insertion is urged on us by some Members of the Committee we have deferred to their views.

14. *Clause 14.*—We have been pressed to amend clause 14 on the lines of section 1 (4) of the Irish Act of 1882 (45 and 46 Vict., c. 25), but after considering the matter carefully, we feel that there is no reason to depart from the proposal in the Bill, which is indeed on the same lines as the corresponding provision in the Criminal Law Amendment Act, 1908.

15. *Clause* 15.—We think this clause as it stood in the Bill went too far, and we would only allow a conviction under it in respect of an offence against any provision of the law which is referred to in the Schedule.

16. *Clause* 19.—We have made the intention of the rule-making power in item 1 of this clause clearer by the insertion of the words " to complete the Court," and we have enabled rules to be made to provide for the intermediate custody of the accused.

17. *Clause* 20.—With the introduction of a definite reference to anarchical and revolutionary crime in this clause, it seems to us to follow that the term "Scheduled offences" must be substituted for the words " offences against the State" which formerly appeared in this clause. A comparison between the language of clause 20 and of clause 32 as they now stand will show the progressive degrees of emergency which will justify the application, respectively, of Part II and Part III of the Bill.

18. *Clause* 21.—We have limited the purposes for which security can be taken under this clause to the very definite cases which we now set out in the Bill. A bond to be of good behaviour would, on the analogy of section 121 of the Code of Criminal Procedure, have covered the case of any offence punishable with imprisonment, and we do not think that it is necessary to go as far as that. We have also made a small amendment at the end of this clause to shew that reports to the police are to be made at the nearest police-station.

19. *Clause 23.*—We have modified the language of this clause to make it clear that unnecessary force is not covered by the terms of the clause.

20. *Clause 25.*—This important clause received our most careful consideration. The procedure it contemplates is a fundamental basis of the recommendations of the Rowlatt Committee, and any material change in the nature of the investigating authority would completely destroy the efficacy of the procedure it contemplates. We think, however, that the following modifications may be made without unduly affecting the procedure. In the first place, we think that the Government should set out all material facts in its possession whether in favour of or against the accused, and we have therefore substituted for the words " in support of its action " at the end of sub-clause (*1*) the words " relevant to the inquiry ". We have made a slight but very important change at the end of sub-clause (*2*) where we require that the investigating authority *shall* make such further investigation, if any, as appears to such authority to be relevant and reasonable. The only ground therefore for refusing to inquire into matters which the person whose case is under investigation desires to adduce would be that such inquiry did not appear to the investigating authority to be relevant and reasonable. This is an important change in the substance of this sub-clause. We have been compelled to reject various proposals affecting the provisos to sub-clause (*2*). We recognise the force and ability with which some of them were pressed, but to give effect to the amendments would be to destroy the whole procedure under this part of the Bill. We have inserted a new sub-clause (*4*) with the object of penalizing false statements to the investigating authority when made by persons other than the person whose case is under investigation. It was suggested to us that conclusions might be held to include the reasons for conclusions. This is clearly not the intention of the Bill, and it seems to us most undesirable that any such argument should be left open. We have, therefore, added the words " and may if it thinks fit adduce reasons in support thereof" to sub-clause (*4*) [now sub-clause (5)] These words may be considered otiose, but for the reasons we have alluded to above, we recommend their insertion.

21. *Clause 26.*—We have amended sub-clause (*1*) so as to make it clear that the conclusions of the investigating authority shall be set out in the form in which they are reported by that authority. We have recast the provisions of this clause after sub-clause (*2*) down to the end of the clause. Our new sub-clauses provide that no order shall continue in force for a total period of more than two years as against three years in the Bill as published. It will be seen from our new sub-clause (*4*) that where an order is made again on the expiry of the first order, the Local Government must refer any representation on behalf of the person to whom it relates to the investigating authority and consider the report of that authority.

22. *Clause 27.*—We have made a small amendment here to make it clear that the penalty provided by this clause shall only be enforced on conviction by a Magistrate.

23. *Clause 29.*—We have amended sub-clause (*1*) of this clause so as to prevent any appointment of *ad hoc* investigating authorities. We are aware that this was not the intention of the Bill, but we think it is desirable that that should be apparent on the face of the clause.

24. *Clause 30.*—We have slightly expanded the provision as to Visiting Committees, and have required that rules made for their guidance should be published in the Gazette.

25. We have made a small addition in clause 31, which needs no explanation.

26. *Clause 33.*—We think it is desirable, and we have made it clear by an appropriate amendment, that no person confined under this Part should be confined in a place where convicted prisoners are confined. This is clearly the intention of the framers of the Rowlatt Report, and it is a matter which, we think, should receive statutory recognition.

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27. *Clause 34.*—In deference to the views of some Members of the Committee, we have reduced the normal term of detention in custody under the provisions of this clause to seven days.

28. *Clauses 38 and 39.*—Exception was taken to the provision in the Bill referred to us which provided that no reference to the investigating authority should be necessary where these powers were employed. We recognise, however, that there is force in the contention which was put before us by the Member in charge of the Bill, who pointed out that in most cases investigation of a very careful nature had recently taken place in regard to these persons We think the compromise provided by our new proviso to both these clauses should meet all reasonable requirements.

29. *Clause 40.*—We think that the period of thirty days contemplated by the proviso to sub-clause (*3*) of this clause is unnecessarily long, and we have reduced it to twenty-one days.

30. *The Schedule.*—We were much pressed to exclude offences under 124 (*a*) from item 1 of the Schedule, and in deference to the wishes expressed by the non-official Members we have removed offences against this section from item 1 and inserted them in item 2 (*a*) of the same Schedule, which will supply the safeguard provided by that item in regard to the offences included therein. As a matter of drafting we have removed those offences which are themselves attempts from the list of offences in item 2(*a*), as we think they are sufficiently provided for by item 3 of the Schedule.

31. It will be observed that all the amendments that we have made in the Bill are amendments in favour of the subject, and that, on the other hand, the main scheme of the Bill has not been materially altered. In these circumstances, the majority of the Committee do not recommend re-publication of the Bill.

32. The publication ordered has been made as follows :—

In English.

Gazette.	*Date.*
Gazette of India .	18th January 1919.
Fort Saint George Gazette	28th January 1919.
Bombay Government Gazette	30th January 1919.
Calcutta Gazette	22nd January 1919.
United Provinces Gazette	25th January 1919.
Punjab Government Gazette	24th January 1919.
Burma Gazette	1st February 1919.
Bihar and Orissa Gazette	29th January 1919.
Central Provinces Gazette	25th January 1919.
Assam Gazette .	29th January 1919.
Coorg District Gazette	1st February 1919.
Sind Official Gazette .	30th January 1919.
North-West Frontier Province Gazette	24th January 1919.

W. H. VINCENT.
G. R. LOWNDES.
MD. SHAFI.*
A. P. MUDDIMAN.
V. SRINIVASAN *
SYED NAWAB ALI.*
C. A. KINCAID.
S. N. BANERJEA.*
P. J. FAGAN.
V. LOVETT,
J. H. DuBOULAY.
T. EMERSON.

The 27th February, 1919.

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*Subject to minutes of dissent printed below.

In conclusion we strongly recommend that, in view of the substantial changes suggested above and in view of the fact that the Bill embodies principles wholly at variance with the principles of the ordinary criminal law, the Bill be republished and referred for opinion to the Local Governments and the High Courts and important public bodies and individuals.

SURENDRANATH BANERJEA.
V. S. SRINIVASA SASTRI.
M. MUHAMMAD SHAFI.

DELHI :
Dated 28th February 1919.

Minute of Dissent.

When the Bill was first introduced it was contemplated by Government to lay down a permanent legislation in the country which, it was feared, would to a great extent restrict the liberty of the people. On the opposition of the peoples' representatives in the Imperial Legislative Council, Government subsequently declared the intention to introduce it only as a temporary measure and thus a considerable portion of its harmful nature was reduced.

The Bill as it has now emerged out of the Select Committee is a decided improvement on the one originally introduced in the Council. In the original draft of the Bill the Preamble was in general terms, but by the addition of the words " for the purpose of dealing with anarchical and revolutionary movements " in the Preamble of the Bill as amended by the Select Committee its scope has been much limited. Several other improvements have likewise been made and they coupled with the words added in the Preamble mentioned above have greatly removed its objectionable character.

I am however to dissent on the following points from the majority report :—

12 (3). Some words to the following effect should be added to the sub-clause ' nor shall the Court make any inference adverse to the accused from such failure on his part.'

29 (2). Of the three persons constituting the investigating authority two should be persons who have held judicial office not inferior to that of a District and Sessions Judge.

Now as the Bill has given rise to considerable nervous agitation in the country and opposition meetings are being held in every quarter and as certain vital changes have been introduced in it by the amendments made by the Select Committee whereby its objectionable character has been much reduced if not removed almost, it will be proper for Government to publish the Bill again in the official gazettes.

DELHI :
Dated 28th February, 1919.

SYED NAWABALI.

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[BILL AS AMENDED BY THE SELECT COMMITTEE.]

[Words printed in italics indicate the amendments suggested by the Select Committee.]

A

BILL

TO

Cope with anarchical and revolutionary crime.

WHEREAS it is expedient to make provision that the ordinary criminal law should be supplemented and emergency powers should be exercisable by the Government *for the purpose of dealing with anarchical and revolutionary movements ;*

And whereas the previous approval of the Secretary of State in Council has been accorded to the making of this law ; It is hereby enacted as follows :—

Short title, extent *and* *duration.*

1. (*1*) This Act may be called the *Anarchical and Revolutionary Crimes* Act, 191 ;

(*2*) It extends to the whole of British India ; *and*

(*3*) *It shall continue in force for three years from the date of the termination of the present war.*

Definitions.

2. (*1*) In this Act, unless there is anything repugnant in the subject or context,—

"Chief Justice" means the Judge of highest rank in a High Court ;

"The Code" means the Code of Criminal Procedure, 1898 ; V of

"High Court" means the highest Court of criminal appeal or revision for any local area ;

"Scheduled offence" means any offence specified in the Schedule.

(*2*) All words and expressions used in this Act and defined in the Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them in the Code.

PART I.

Condition of application of Part I.

3. If the Governor General in Council is satisfied *that, in the whole or any part of British India, anarchical or revolutionary movements are being promoted, and that scheduled offences in connection with such movements are prevalent to such an extent* that it is expedient in the interests of the public safety to provide for the speedy trial of such offences, he may, by notification in the Gazette

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of India, make a declaration to that effect, and thereupon the provisions of this Part shall come into force in the area specified in the notification.

Initiation of proceedings.

4. (*1*) Where the Local Government is of opinion that the trial of any person accused of a scheduled offence should be held in accordance with the provisions of this Part, it may order any officer of Government to prefer a written information to the Chief Justice against such person.

(*2*) No order under sub-section (*1*) shall be made in respect of, or be deemed to include, any person who has been committed under the Code for trial before a High Court, *or a Court of Session* but, save as aforesaid, an order under that sub-section may be made in respect of any scheduled offence whether such offence was committed before or after the issue of the notification under section 3.

(*3*) The information shall state the offence charged and so far as known the name, place of residence, and occupation of the accused, and the time and place when and where the offence is alleged to have been committed and *all particulars* within the knowledge of the prosecution *of what is intended to be proved against the accused.*

(*4*) The Chief Justice may by order require any information to be amended so as to supply further particulars of the offence charged to the accused, and shall direct a copy of the information or the amended information, as the case may be, to be served upon the accused in such manner as the Chief Justice may direct.

Constitution of Court.

5. Upon such service being effected, and on application duly made to him, the Chief Justice shall nominate three of the High Court Judges (hereinafter referred to as the Court) for the trial of the information, and shall fix a date for the commencement of the trial :

Provided that, when the total number of Judges of the High Court does not exceed three, the Chief Justice shall nominate not more than two such Judges, and shall complete the Court by the nomination of one or, if necessary, two persons of either of the following classes, namely :—

(*a*) persons who have served as permanent Judges of the High Court; or

(*b*) with the consent of the Chief Justice of another High Court, persons who are Judges of that High Court.

Place of sitting.

6. The Court may sit for the whole or any part of a trial at such place or places in the province as it may consider desirable :

Provided that if the Advocate-General certifies to the Court that it is in his opinion necessary in the interests of justice that the whole or any part of a trial shall be held at some place other than the usual place of sitting of the High Court, the Court shall, after hearing the accused, make an order to that effect, unless for reasons to be recorded in writing it thinks fit to make any other order. It shall not be necessary for the certificate of the Advocate-General to be supported by any affidavit, nor shall he be required to state the grounds upon which such certificate was given.

Application of Code of Criminal Procedure subject to this Part.

7. The provisions of the Code shall apply to proceedings under this Part, in so far as they are not inconsistent with the provisions therein contained, and such proceedings shall be deemed to be proceedings under the Code, and the Court shall have all the powers conferred by the Code on a Court of Session exercising original jurisdiction.

Trial.

8. (*1*) The trial shall be commenced by the reading of the information, and thereafter *the prosecutor shall state shortly by what evidence he expects to prove the guilt of the accused.*

(*2*) *The Court shall then, subject* to the provisions of this Part, in trying the accused, follow the procedure prescribed by the Code for the trial of warrant cases by Magistrates.

Adjournment.

9. If a charge is framed, the accused shall be entitled to ask for an adjournment for *fourteen* days, or any less period that he may specify, and the Court shall comply with his request, *but* subject to the adjournment provided for by this section, the Court shall not be bound to adjourn any trial for any purpose, unless such adjournment is in its opinion necessary in the interests of justice.

Record of evidence.

10. The Court shall *cause* the evidence of each witness *who is* examined *to be recorded in full in such manner as the Court may direct.*

Prohibition or restriction of publication of reports of trial.

11. The Court, if it is of opinion that such a course is necessary in the public interest or for the protection of a witness, may prohibit or restrict in such way as it may direct the publication or disclosure of its proceedings or any part of its proceedings.

Examination of accused.

12. (*1*) No questions shall be put by the Court to the accused in the course of a trial under this Part until the close of the case for the prosecution. Thereafter, and before the accused enters on his defence, the Court shall *inform the accused that he is entitled if he so desires to give evidence on oath on his own behalf*, and shall at the same time inform him that if he does so, he will be liable to cross-examination. Unless the accused then states that he *desires* to give evidence on oath, the Court may at any time thereafter question the accused generally on the case in accordance with the provisions of section 342 of the Code.

(*2*) If when so called upon, the accused states that he *desires* to give evidence on oath, the Court shall not at any subsequent stage put any question to him :

Provided that if the accused does not so give evidence, then, after the witnesses for the defence have been examined, the Court may question the accused generally on the case in accordance with the provisions of the said section.

(*3*) *The failure of the accused to give evidence on oath shall not be made the subject of any comment by the prosecution.*

(*4*) If the accused gives evidence on oath, the following rules shall be observed namely :—

(*a*) He may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged.

(*b*) He shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of, or has been charged with, any offence other than that with which he is then charged, or has a bad character, unless—

(*i*) proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged, or

(*ii*) witnesses for the prosecution have been cross-examined with a view to establish his own good character, or he has given evidence of his good character, or the nature or the conduct of the defence is such as to involve imputations on the character of the witnesses for the prosecution, or

(*iii*) he has given evidence against any other person charged with the same offence.

(*c*) *Unless otherwise ordered by the Court, he shall give his evidence from the witness-box or other place from which the other witnesses give their evidence.*

Right of reply.

13. If the accused or any one of the accused calls and examines any witness, the right of final reply shall lie with the prosecution, but in all other cases with the accused :

Provided that the examination of an accused as a witness shall not of itself confer the right of final reply on the prosecution.

Differences of opinion.

14. In the event of any difference of opinion between the members of the Court, the opinion of the majority shall prevail.

Conviction for offence referred to in schedule.

15. If *at* any trial under this Part it is proved that the accused has committed an offence *against any provision of the law which is referred to in the Schedule,* the Court may convict the accused of that offence although he was not charged with it.

Sentence.

16. The Court may pass upon any person convicted by it any sentence authorised by law for the punishment of the offence of which such person is convicted, and no order of confirmation shall be necessary in the case of any sentence passed by it.

Exclusion of interference of other criminal Courts.

17. The judgment of the Court shall be final and conclusive and, notwithstanding the provisions of the Code or of any other law for the time being in force or of anything having the force of law by whatsoever authority made or done, there shall be no appeal from any order or sentence of the Court, and no High Court shall have authority to revise any such order or sentence or to transfer any case from such Court, or to make any order under section 491 of the Code or have any jurisdiction of any kind in respect of any proceedings under this Part :

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Provided that nothing in this section shall be deemed to affect the powers of the Governor General in Council or of the Local Government to make orders under section 401 or 402 of the Code in respect of any person sentenced by the Court.

Special rules of evidence.

18. (*1*) Notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872, I of 1872 where—

(*a*) the statement of any person has been recorded by a Magistrate, and such statement has been read over and explained to the person making it and has been signed by him, or

(*b*) the statement of any person has been recorded by the Court, but such person has not been cross-examined,

such statement may be admitted in evidence by the Court if the person making the same is dead or cannot be found or is incapable of giving evidence, and *it is established to the satisfaction of the Court* that such death, disappearance or incapacity has been caused in the interests of the accused.

(*2*) Depositions recorded under section 512 of the Code may, in the circumstances specified in that section, be given in evidence at the trial of an accused under this Part.

Power to make rules.

19. The Chief Justice may from time to time make rules providing for—

(1) the appointment and powers of a President of the Court, and the procedure to be adopted *to complete the Court* in the event of any Judge of the Court being prevented from attending throughout the trial of an accused ; and

(2) any matters (*including the intermediate custody of the accused*) which appear to him necessary for carrying into effect or supplementing the provisions of this Part preliminary or ancillary to trials.

PART II.

Condition of application of Part II.

20. If the Governor General in Council is satisfied that *anarchical or revolutionary* movements which are, in his opinion, likely to lead to the commission of *scheduled* offences are being extensively promoted in the whole or any part of British India, he may, by notification in the Gazette of India, make a declaration to that effect, and thereupon the provisions of this Part shall come into force in the area specified in the notification.

Powers exercisable when Part II is in force.

21. (*1*) Where, in the opinion of the Local Government, there are reasonable grounds for believing that any person is or has been actively concerned in such area in any movement of the nature referred to in section 20, the Local Government may, by order in writing containing a declaration to that effect, give all or any of the following directions, namely : that such person—

(*a*) shall, within such period as may be specified in the order, execute a bond with or without sureties *undertaking*, for such period not exceeding one year as may be so specified, *that he*

will not commit, or attempt or conspire to commit, or abet the commitment of, any offence against any provision of the law which is referred to in the Schedule ;

(*b*) shall notify his residence and any change of residence to such authority as may be so specified ;

(*c*) shall remain or reside in any area in British India so specified ;

provided that, if the area so specified is outside the province, the concurrence of the Local Government of that area to the making of the order shall first have been obtained ;

(*d*) shall abstain from any act so specified which, in the opinion of the Local Government, is calculated to disturb the public peace or is prejudicial to the public safety ; and

(*e*) shall report himself to the *officer in charge of the police-station nearest to his residence* at such periods as may be so specified.

(*2*) Any order under clauses (*b*) to (*e*) may also be made to take effect upon default by the person concerned in complying with an order under clause (*a*).

Service of orders under section 21.

22. An order made under section 21 shall be served on the person in respect of whom it is made in the manner provided in the Code for service of summons, and upon such service such person shall be deemed to have due notice thereof.

Enforcement of orders.

23. The Local Government and every officer of Government to whom a copy of any order made under section 21 may be directed by, or under the general or special authority of, the Local Government, may use *all* means *necessary* to enforce compliance with the same.

Interim nature of order made by Local Government.

24. An order made under section 21 shall only continue in force for a period of one month, unless it is extended by the Local Government as hereinafter provided in this Part.

Reference to investigating authority.

25. (*1*) When the Local Government makes an order under section 21, such Government shall, as soon as may be, forward to the investigating authority to be constituted under this Act a concise statement in writing setting forth plainly the grounds on which the Government considered it necessary that the order should be made, and shall lay before the investigating authority all material facts and circumstances in its possession *relevant to the inquiry*.

(*2*) The investigating authority shall then hold an inquiry *in camera* for the purpose of ascertaining what, in its opinion, having regard to the facts and circumstances adduced by the Government, appears against the person in respect of whom the order has been made. Such authority shall in every case allow the person in question a reasonable opportunity of appearing before it at some stage in its proceedings and shall, if he so appears, explain to him the nature of the charge made against him and shall hear any explanation he may have to offer, and *shall* make

such further investigation (if any) as appears to such authority to be relevant and reasonable :

Provided that the investigating authority shall not disclose to the person whose case is before it any fact the communication of which might endanger the public safety or the safety of any individual :

Provided further that nothing in this sub-section shall be deemed to entitle the person in question to appear or to be represented before the investigating authority by pleader, nor shall the Local Government be so entitled.

(3) Subject to the provisions of sub-section (2) the inquiry shall be conducted in such manner as the investigating authority considers best suited to elicit the facts of the case; and in making the inquiry, such authority shall not be bound to observe the rules of the law of evidence.

(4) *Any statement made to an investigating authority by any person other than the person whose case is under investigation shall be deemed to be information given to a public servant within the meaning of section 182 of the Indian Penal Code.* XLV of 1860.

(5) On the completion of the inquiry, the investigating authority shall report in writing to the Local Government the conclusions at which it has arrived, *and may, if it thinks fit, adduce reasons in support thereof.*

(6) If the investigating authority has not completed the inquiry within the period for which the duration of the order is limited by section 24, such authority may recommend to the Local Government that the period of duration of the order shall be extended for such period as it may consider necessary, and on such a recommendation, the Local Government may extend the duration of the order accordingly.

Disposal of report of investigating authority.

26. (1) On receipt of the report of the investigating authority, the Local Government may discharge the order made under section 21, or may *make* any order which is authorised by that section :

Provided that—

(a) any order so *made* shall recite the *conclusions* of the investigating authority *as reported by that authority ;* and

(b) a copy of such order shall be furnished to the person in respect of whom it is made.

(2) *No order made under sub-section (1) shall continue in force for more than one year from the date on which it was made.*

(3) *On the expiry of an order made under sub-section (1), the Local Government may, if it is satisfied that such a course is necessary in the interests of the public safety, again make in respect of the person to whom such order related any order which is authorised by section 21 :*

Provided that no order made under this sub-section shall continue in force for more than a year from the date on which it was made.

(4) *Where an order is made under sub-section (3), a copy of the order shall be furnished to the person in respect of whom it is made, who may submit to the Local Government a representation on his own behalf in regard to any such order.*

Any such representation shall be forwarded by the Local Government to the investigating authority for investigation and report, and the investigating authority shall report thereon, and the Local Government shall consider the report of such authority.

(5) *Any order made under this section may at any time be discharged or may be altered by the substitution of any other order authorised by section 21:*

Provided that no such alteration shall have the effect of prolonging the period for which such order would have been in force.

(6) *The provisions of section 23 shall apply to the enforcement of orders made under this section.*

Penalty for disobedience to order.

27. If any person fails to comply with, or attempts to evade, any order (other than an order to furnish security) made under the provisions of section 21 or section 26, he shall *on conviction by a Magistrate* be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Provisions as to bonds.

28. The provisions of section 514 of the Code shall apply to bonds executed under the provisions of this Part, with this modification that the powers conferred by that section on the Court shall be exercisable by any District Magistrate or Chief Presidency Magistrate, on application made on behalf of the Local Government.

Investigating authorities.

29. (*1*) *As soon as may be after a notification has been issued bringing this Part into force,* the Local Government shall appoint one or more investigating authorities for the purposes of this Part *and may appoint additional investigating authorities when necessary.*

(*2*) Every investigating authority shall be appointed by order in writing, and shall consist of three persons, of whom one shall be a person having held judicial office not inferior to that of a District and Sessions Judge, and one shall be a person not in the service of the Crown in India.

(*3*) The Local Government may by like order appoint persons to fill casual vacancies occurring by reason of death, resignation of office or otherwise on any investigating authority, but in so doing shall observe the provisions of sub-section (*2*).

Visiting Committees.

30. (*1*) The Local Government shall by order in writing appoint such persons as it thinks fit to be Visiting Committees *to report upon the welfare and treatment of persons under restraint under this Part,* and shall by rules prescribe the functions which these Committees shall exercise :

Provided that, in making such rules, provision shall be made for periodical visits to persons under restraint under the provisions of this Part :

Provided further that a person in respect of whom an order has been made under section 21 or section 26 requiring him to abstain from any specified act or to report himself to the police shall not be deemed to be under restraint for the purposes of this section.

(*2*) *All rules made under sub-section (1) shall be published in the local official Gazette, and on such publication shall have effect as if enacted in this Part.*

31. (*1*) The Local Government may make rules *prescribing the authorities before whom and the manner in which bonds under this Part shall be executed and* providing for the procedure to be followed regarding the notification of residence and reports to the police by persons in respect of whom orders have been made under section 21 or section 26.

Power to make rules by Local Government.

(*2*) All rules made under sub-section (*1*) shall be published in the local official Gazette, and on such publication shall have effect as if enacted in this Part.

PART III.

32. If the Governor General in Council is satisfied *that in the whole or any part of British India anarchical or revolutionary movements are being promoted and that scheduled offences in connection with such movements are prevalent* to such an extent as to endanger the public safety, he may, by notification in the Gazette of India, make a declaration to that effect, and thereupon the provisions of this Part shall come into force in the area specified in the notification.

Condition of application of Part III.

33. (*1*) Where, in the opinion of the Local Government, there are reasonable grounds for believing that any person has been or is concerned in such area in any scheduled offence, the Local Government may make in respect of such person any order authorised by section 21, and may further by order in writing direct—

Powers exercisable when Part III is in force.

(*a*) the arrest of any such person without warrant;

(*b*) the confinement of any such person in such place and under such conditions and restrictions as it may specify:

Provided that no such person shall be confined in that part of a prison or other place which is used for the confinement of convicted criminal prisoners as defined in the Prisons Act, 1894; and IX of 1894

(*c*) the search of any place specified in the order which, in the opinion of the Local Government, has been, is being, or is about to be, used by any such person for any purpose prejudicial to the public safety.

(*2*) The arrest of any person in pursuance of an order under clause (*a*) of sub-section (*1*) may be effected at any place where he may be found by any police-officer or by any other officer of Government to whom the order may be directed.

(*3*) An order for confinement under clause (*b*) or for search under clause (*c*) of sub-section (*1*) may be carried out by any officer of Government to whom the order may be directed, and such officer may use *all* means *necessary* to enforce the same.

34. Any person making an arrest in pursuance of an order under clause (*a*) of section 33 (*1*) shall forthwith report the fact to the Local Government and, pending receipt of the orders of the Local Government, may by order in writing commit any person so arrested to such

Arrest.

custody as the Local Government may by general or special order specify in this behalf:

Provided that no person shall be detained in such custody for a period exceeding *seven* days *unless the Local Government so directs, and in no case shall such detention exceed fifteen days.*

Search.

35. An order for the search of any place issued under the provisions of clause (*c*) of section 33 (*1*) shall be deemed to be a search warrant issued by the District Magistrate having jurisdiction in the place specified therein, and shall be sufficient authority for the seizure of anything found in such place which the person executing the order has reason to believe is being used, or is likely to be used for any purpose prejudicial to the public safety, and the provisions of the Code, so far as they can be made applicable, shall apply to searches made under the authority of any such order and to the disposal of any property seized in any such search.

Application of Part II, procedure.

36. Where an order (other than an order for arrest or search) has been made under section 33, the provisions of sections 22 to 26 shall apply in the same way as if the order were an order made under section 21, save that, on receipt of the report of the investigating authority, the Local Government may, subject to the conditions prescribed by section 26, make any order which is authorized by section 33, and sections 22 to 26 and 28 to 31 shall be deemed to be included in this Part.

Penalty for disobedience to orders under this Part.

37. If any person fails to comply with, or attempts to evade, any order made under section 33 or section 36 other than an order to furnish security, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

PART IV.

Persons already under executive control.

38. (*1*) On the expiration of the Defence of India (Criminal Law Amendment) Act, 1915, every person in respect of whom an order under rule 3 of the Defence of India (Consolidation) Rules, 1915, was in force immediately before the expiration of that Act, and who has in the opinion of the Local Government been concerned in any scheduled offence, or who is on such expiration in confinement in accordance with the provisions of the Bengal State Prisoners Regulation, 1818, shall be deemed to be a person resident in an area in which a notification under section 32 is in force, and the provisions of Part III shall apply to every such person accordingly. IV of 1915. III of 1818.

Provided that within one month from the expiration of the Defence of India (Criminal Law Amendment) Act, 1915, the Local Government may make any order of restraint which is authorised by that Part in respect of any such person, and if such an order is so made it shall be deemed to be an order made under section 26 (3) as made applicable by section 36, and the provisions of that Part regarding such an order shall apply accordingly.

(*2*) On the expiration of the Ingress into India Ordinance, 1914, as continued in force by the Emergency Legislation Continuance Act, 1915, any person in respect of whom an order was V of 1914. I of 1915.

in force immediately before such expiration under section 2 of that Ordinance read with clause (*b*) or clause (*c*) of sub-section (*2*) of section 3 of the Foreigners Ordinance, 1914, shall be deemed to be a person resident in an area in which a notification under section 20 is in force, and the provisions of Part II shall apply to every such person accordingly : III of 1914.

Provided that within one month from the expiration of the Ingress into India Ordinance, 1914, the Local Government may make any order of restraint which is authorised by that Part in respect of any such person, and if such an order is so made it shall be deemed to be an order made under section 26 (3), and the provisions of that Part regarding such an order shall apply accordingly.

PART V.

Effect of cancellation of notifications under sections 3, 20 or 32.

39. When a notification issued under section 3 or section 20 or section 32 is cancelled, such cancellation shall not affect any trial, investigation or order commenced or made under this Act, and such trial, investigation or order may be continued or enforced, and on the completion of any such investigation, any order which might otherwise have been made may be made and enforced, as if such notification had not been cancelled.

Effect of orders made under Parts II and III outside notified area.

40. (*1*) An order made under Part II or Part III, directing a person to remain or reside in any area in British India outside the area in which such Part is in force, shall be as valid, and enforceable in like manner, as if such Part were in force throughout British India.

(*2*) An order made under clause (*a*) of section 33 (*1*) for the arrest of any person may be executed at any place in British India outside the area in which Part III is in force, and the same procedure shall be followed as if Part III was in force throughout British India :

Provided that, if the arrest is made outside the province of the Local Government which made the order, the report required by section 34 shall be made to that Local Government, and the period of detention limited by the proviso to that section shall be extended to *twenty-one* days.

Orders under this Act not to be called in question by the Courts.

41. No order under this Act shall be called in question in any Court, and no suit or prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Powers of Act to be cumulative.

42. All powers given by this Act shall be in addition to, and not in derogation of, any other powers conferred by or under any enactment, and all such powers may be exercised in the same manner and by the same authority as if this Act had not been passed.

THE SCHEDULE.

(*See section 2.*)

(1) Any offence under Chapter VI (*other than an offence under section 124A*) and sections 131 and 132 of the Indian Penal Code ; XLV of 1860

(2) Any of the following offences, if, in the opinion of Government, such offence is connected with any movement endangering the safety of the State, namely:—

(*a*) any offence under sections *124A*, 148, 153A, 302, 304, 326, 327, 329, 332, 333, 385, 386, 387, 392, 394, 395, 396, 397, 398, 399, 400, 401, 402, 431, 435, 436, 437, 438, 440, 454, 455, 457, 458, 459, 460, and 506 of the Indian Penal Code; XLV of 1860.

(*b*) any offence under the Explosive Substances Act, 1908; VI of 1908.

(*c*) any offence under section 20 of the Indian Arms Act, 1878. XI of 1878.

(3) Any attempt or conspiracy to commit or any abetment of any of the above offences.

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GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

Report of the Select Committee on the Bill to make provision in special circumstances to supplement the ordinary Criminal Law and for the exercise of emergency powers by Government.

Bill as amended.

SGPI, Delhi—No. 230 LD—27-2-19—350.

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Extract from the Proceedings of the Indian Legislative Council assembled under the provisions of the Government of India Act, 1915. (*5 & 6 Geo. V, Ch. 61.*) Proc.

The Council met at the Council Chamber, Imperial Secretariat, Delhi, on Saturday, the 1st March, 1919.

* * * * *

CRIMINAL LAW (EMERGENCY POWERS) BILL.

The Hon'ble Sir William Vincent:—"My Lord, I beg to present the Report of the Select Committee on the Bill to make provision in special circumstances to supplement the ordinary criminal law and for the exercise of emergency powers by Government." 11-54 A.M.

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SGPI, Delhi.—245 LD—18-3-19—80.

No. 614, dated the 3rd March, 1919. Pro. No. 60

A COPY of the marginally noted papers is forwarded to the Home Department, in continuation of this Department endorsement, No. 430, dated 10th February, 1919. The report was presented in Council on 1st March, 1919.

Report of the Select Committee on the Criminal Law (Emergency Powers) Bill with the Bill as amended.

No. 56, dated Delhi, the 5th March, 1919. Pro. No. 76

From—The Hon'ble MR. H. M. SMITH, Secretary to the Government of India, Legislative Department,

To—The Permanent Under-Secretary of State for India.

IN continuation of the Hon'ble Mr. Muddiman's letter No. 25, dated the 12th February 1919, I am directed to forward herewith a copy of the Report of the Select Committee on the Bill noted on the margin with the Bill as amended by the Committee.

The Criminal Law (Emergency Powers) Bill.

2. An extract from the Proceedings of the meeting of the Council, held on the 1st March, 1919, at which the Report was presented, also accompanies.

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ACT NO. XI OF 1919. Pro. No. 70.

[PASSED BY THE INDIAN LEGISLATIVE COUNCIL.]

(*Received the assent of the Governor General on the 21st March, 1919.*)

An Act to cope with anarchical and revolutionary crime.

WHEREAS it is expedient to make provision that the ordinary criminal law should be supplemented and emergency powers should be exercisable by the Government for the purpose of dealing with anarchical and revolutionary movements;

And whereas the previous approval of the Secretary of State in Council has been accorded to the making of this law; It is hereby enacted as follows:—

Short title, extent and duration.

1. (*1*) This Act may be called the Anarchical and Revolutionary Crimes Act, 1919;

(*2*) It extends to the whole of British India; and

(*3*) It shall continue in force for three years from the date of the termination of the present war.

Definitions.

2. (*1*) In this Act, unless there is anything repugnant in the subject or context,—

"Chief Justice" means the Judge of highest rank in a High Court;

"The Code" means the Code of Criminal Procedure, 1898; V of 1898.

"High Court" means the highest Court of criminal appeal or revision for any local area;

"Scheduled offence" means any offence specified in the Schedule.

(*2*) All words and expressions used in this Act and defined in the Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them in the Code.

PART I

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[*Price five annas and six pies.*]

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PART I.

Condition of application of Part I.

3. If the Governor General in Council is satisfied that, in the whole or any part of British India, anarchical or revolutionary movements are being promoted, and that scheduled offences in connection with such movements are prevalent to such an extent that it is expedient in the interests of the public safety to provide for the speedy trial of such offences, he may, by notification in the Gazette of India, make a declaration to that effect, and thereupon the provisions of this Part shall come into force in the area specified in the notification.

Initiation of proceedings.

4. (*1*) Where the Local Government is of opinion that the trial of any person accused of a scheduled offence should be held in accordance with the provisions of this Part, it may order any officer of Government to prefer a written information to the Chief Justice against such person.

(*2*) No order under sub-section (*1*) shall be made in respect of, or be deemed to include, any person who has been committed under the Code for trial before a High Court or a Court of Session, but save as aforesaid, an order under that sub-section may be made in respect of any scheduled offence whether such offence was committed before or after the issue of the notification under section 3.

(*3*) The information shall state the offence charged and so far as known the name, place of residence, and occupation of the accused, and the time and place when and where the offence is alleged to have been committed and all particulars within the knowledge of the prosecution of what is intended to be proved against the accused.

(*4*) The Chief Justice may by order require any information to be amended so as to supply further particulars of the offence charged to the accused, and shall direct a copy of the information or the amended information, as the case may be, to be served upon the accused in such manner as the Chief Justice may direct.

5. Upon

Constitution of Court.

5. Upon such service being effected, and on application duly made to him, the Chief Justice shall nominate three of the High Court Judges (hereinafter referred to as the Court) for the trial of the information, and shall fix a date for the commencement of the trial:

Provided that when the total number of Judges of the High Court does not exceed three, the Chief Justice shall nominate not more than two such Judges, and shall complete the Court by the nomination of one or, if necessary, two persons of either of the following classes, namely:—

(*a*) persons who have served as permanent Judges of the High Court; or

(*b*) with the consent of the Chief Justice of another High Court, persons who are Judges of that High Court.

Place of sitting.

6. The Court may sit for the whole or any part of a trial at such place or places in the province as it may consider desirable:

Provided that if the Advocate-General certifies to the Court that it is in his opinion necessary in the interests of justice that the whole or any part of a trial shall be held at some place other than the usual place of sitting of the High Court, the Court shall, after hearing the accused, make an order to that effect, unless for reasons to be recorded in writing it thinks fit to make any other order. It shall not be necessary for the certificate of the Advocate-General to be supported by any affidavit, nor shall he be required to state the grounds upon which such certificate was given.

Application of Code of Criminal Procedure subject to this Part.

7. The provisions of the Code shall apply to proceedings under this Part, in so far as the said provisions are not inconsistent with the provisions of this Part, and such proceedings shall be deemed to be proceedings under the Code, and the Court shall have all the powers conferred by the Code on a Court of Session exercising original jurisdiction.

Trial.

8. (*1*) The trial shall be commenced by the reading of the information, and thereafter the prosecutor shall state

state shortly by what evidence he expects to prove the guilt of the accused.

(*2*) The Court shall then, subject to the provisions of this Part, in trying the accused, follow the procedure prescribed by the Code for the trial of warrant cases by Magistrates.

Adjournment.

9. If a charge is framed, the accused shall be entitled to ask for an adjournment for fourteen days, or any less period that he may specify, and the Court shall comply with his request, but, subject to the adjournment provided for by this section, the Court shall not be bound to adjourn any trial for any purpose, unless such adjournment is in its opinion necessary in the interests of justice.

Record of evidence.

10. The Court shall cause the evidence of each witness who is examined to be recorded in full in such manner as the Court may direct.

Prohibition or restriction of publication of reports of trial.

11. The Court, if it is of opinion that such a course is necessary in the public interest or for the protection of a witness, may prohibit or restrict in such way as it may direct the publication or disclosure of its proceedings or any part of its proceedings.

Examination of accused.

12. (*1*) No questions shall be put by the Court to the accused in the course of a trial under this Part until the close of the case for the prosecution. Thereafter, and before the accused enters on his defence, the Court shall inform the accused that he is entitled, if he so desires, to give evidence on oath on his own behalf, and shall at the same time inform him that if he does so, he will be liable to cross-examination. Unless the accused then states that he desires to give evidence on oath, the Court may at any time thereafter question the accused generally on the case in accordance with the provisions of section 342 of the Code.

(*2*) If, when so called upon, the accused states that he desires to give evidence on oath, the Court shall not at any subsequent stage put any question to him:

Provided that if the accused does not so give evidence, then, after the witnesses for the defence have

have been examined, the Court may question the accused generally on the case in accordance with the provisions of the said section.

(*3*) The failure of the accused to give evidence on oath shall not be made the subject of any comment by the prosecution, nor shall the Court draw any inference adverse to the accused from such failure.

(*4*) If the accused gives evidence on oath, the following rules shall be observed, namely :—

(*a*) He may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged.

(*b*) He shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of, or has been charged with, any offence other than that with which he is then charged, or has a bad character, unless—

(*i*) proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged, or

(*ii*) witnesses for the prosecution have been cross-examined with a view to establish his own good character, or he has given evidence of his good character or the nature or the conduct of the defence is such as to involve imputations on the character of the witnesses for the prosecution, or

(*iii*) he has given evidence against any other person charged with the same offence.

(*c*) Unless otherwise ordered by the Court, he shall give his evidence from the witness-box or other place from which the other witnesses give their evidence.

13. If

Right of reply.

13. If the accused or any one of the accused calls and examines any witness, the right of final reply shall lie with the prosecution, but in all other cases with the accused:

Provided that the examination of an accused as a witness shall not of itself confer the right of final reply on the prosecution.

Differences of opinion.

14. In the event of any difference of opinion among the members of the Court, the opinion of the majority shall prevail.

Accused may be convicted of any offence referred to in Schedule.

15. At any trial under this Part the accused may be charged with and convicted of any offence against any provision of the law which is referred to in the Schedule.

Sentence.

16. The Court may pass upon any person convicted by it any sentence authorised by law for the punishment of the offence of which such person is convicted, and no order of confirmation shall be necessary in the case of any sentence passed by it:

Provided that a sentence of death shall not be passed upon any accused person in respect of whose guilt there is a difference of opinion among the members of the Court.

Exclusion of interference of other criminal Courts.

17. The judgment of the Court shall be final and conclusive and, notwithstanding the provisions of the Code or of any other law for the time being in force, or of anything having the force of law by whatsoever authority made or done, there shall be no appeal from any order or sentence of the Court, and no High Court shall have authority to revise any such order or sentence or to transfer any case from such Court, or to make any order under section 491 of the Code or have any jurisdiction of any kind in respect of any proceedings under this Part:

Provided that nothing in this section shall be deemed to affect the powers of the Governor General in Council or of the Local Government to make orders under section 401 or section 402 of the Code in respect of any person sentenced by the Court.

18. Notwithstanding

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Special rules of evidence.

18. (*1*) Notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872, where— I of 1872.

(*a*) the statement of any person has been recorded by a Magistrate, and such statement has been read over and explained to the person making it and has been signed by him, or

(*b*) the statement of any person has been recorded by the Court, but such person has not been cross-examined,

such statement may be admitted in evidence by the Court if the person making the same is dead or cannot be found or is incapable of giving evidence, and it is established to the satisfaction of the Court that such death, disappearance or incapacity has been caused in the interests of the accused.

(*2*) Depositions recorded under section 512 of the Code may, in the circumstances specified in that section, be given in evidence at the trial of an accused under this Part.

Recall of witnesses on reconstitution of Court.

19. In case of any reconstitution of the Court during the trial, the Court so reconstituted shall, if the accused so desires, re-call and re-hear any witness who has already given evidence in the case.

Power to make rules.

20. The Chief Justice may from time to time make rules providing for—

(1) the appointment and powers of a President of the Court, and the procedure to be adopted to complete the Court in the event of any Judge of the Court being prevented from attending throughout the trial of an accused ; and

(2) any matters (including the intermediate custody of the accused and his release on bail) which appear to him necessary for carrying into effect or supplementing the provisions of this Part preliminary or ancillary to trials.

PART II.

Condition of application of Part II.

21. If the Governor General in Council is satisfied that anarchical or revolutionary movements which are, in his opinion, likely to lead to the commission of scheduled offences are being extensively promoted in the whole or any part of British India, he may, by notification in the Gazette of India, make a declaration to that effect, and thereupon the provisions of this Part shall come into force in the area specified in the notification.

Powers exercisable when Part II is in force.

22. (*1*) Where, in the opinion of the Local Government, there are reasonable grounds for believing that any person is or has been actively concerned in such area in any movement of the nature referred to in section 21, the Local Government may place all the materials in its possession relating to his case before a judicial officer who is qualified for appointment to a High Court and take his opinion thereon. If, after considering such opinion, the Local Government is satisfied that action under the provisions of this section is necessary, it may by order in writing containing a declaration to the effect that such person is or has been actively concerned in such area in any movement of the nature referred to in section 21, give all or any of the following directions, namely : that such person—

(*a*) shall, within such period as may be specified in the order, execute a bond with or without sureties undertaking, for such period not exceeding one year as may be so specified, that he will not commit, or attempt or conspire to commit, or abet the commitment of, any offence against any provision of the law which is referred to in the Schedule ;

(*b*) shall notify his residence and any change of residence to such authority as may be so specified ;

(*c*) shall remain or reside in any area in British India so specified :

Provided

Provided that, if the area so specified is outside the province, the concurrence of the Local Government of that area to the making of the order shall first have been obtained ;

(*d*) shall abstain from any act so specified which, in the opinion of the Local Government, is calculated to disturb the public peace or is prejudicial to the public safety ; and

(*e*) shall report himself to the officer in charge of the police-station nearest to his residence at such periods as may be so specified.

(*2*) Any order under clauses (*b*) to (*e*) of sub-section (*1*) may also be made to take effect upon default by the person concerned in complying with an order under clause (*a*) of that sub-section.

Service of orders under section 22.

23. An order made under section 22 shall be served on the person in respect of whom it is made in the manner provided in the Code for service of summons, and upon such service such person shall be deemed to have due notice thereof.

Enforcement of orders.

24. The Local Government and every officer of Government to whom a copy of any order made under section 22 may be directed by, or under the general or special authority of, the Local Government, may use all means reasonably necessary to enforce compliance with the same.

Interim nature of order made by Local Government.

25. An order made under section 22 shall only continue in force for a period of one month, unless it is extended by the Local Government as hereinafter provided in this Part.

Reference to investigating authority.

26. (*1*) When the Local Government makes an order under section 22, such Government shall, as soon as may be, forward to the investigating authority to be constituted under this Act a concise statement in writing setting forth plainly the grounds on which the Government considered it necessary that the order should be made, and shall lay before the investigating authority all material facts and circumstances in its possession relevant to the inquiry.

(*2*) The

(*2*) The investigating authority shall then hold an inquiry *in camera* for the purpose of ascertaining what, in its opinion, having regard to the facts and circumstances adduced by the Government, appears against the person in respect of whom the order has been made. Such authority shall in every case allow the person in question a reasonable opportunity of appearing before it at some stage in its proceedings and shall, if he so appears, explain to him the nature of the charge made against him and shall hear any explanation he may have to offer, and shall make such further investigation (if any) as appears to such authority to be relevant and reasonable :

Provided that—

(*a*) nothing in this sub-section shall be deemed to entitle the person whose case is before the investigating authority to appear or to be represented before it by pleader, nor shall the Local Government be so entitled :

(*b*) the investigating authority shall not disclose to the person in question any fact the communication of which might endanger the public safety or the safety of any individual:

(*c*) if the person in question requests the investigating authority to secure the attendance of any person or the production of any document or thing, such authority shall, unless for reasons to be recorded in writing it deems it unnecessary so to do, cause such person to attend or such document or thing to be produced, and for that purpose shall have all the powers conferred on a District Magistrate in respect of those matters by the Code.

(*3*) Subject to the provisions of sub-section (*2*) the inquiry shall be conducted in such manner as the investigating authority considers best suited to elicit the facts of the case; and in making the inquiry, such

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such authority shall not be bound to observe the rules of the law of evidence.

(*4*) Any statement made to an investigating authority by any person other than the person whose case is under investigation shall be deemed to be information given to a public servant within the meaning of section 182 of the Indian Penal Code. XLV of 1860.

(*5*) On the completion of the inquiry, the investigating authority shall report in writing to the Local Government the conclusions at which it has arrived, and shall adduce reasons in support thereof. In so reporting the investigating authority shall state whether or not, in its opinion, the person whose case is under investigation is or has been actively concerned in any movement of the nature referred to in section 21.

(*6*) If the investigating authority has not completed the inquiry within the period for which the duration of the order is limited by section 25, such authority may recommend to the Local Government that the period of duration of the order shall be extended for such period as it may consider necessary, and on such a recommendation the Local Government may extend the duration of the order accordingly.

Disposal of report of investigating authority.

27. (*1*) On receipt of the report of the investigating authority, the Local Government may discharge the order made under section 22, or may make any order which is authorised by that section :

Provided that—

(*a*) any order so made shall recite the conclusions of the investigating authority as reported by that authority; and

(*b*) a copy of such order shall be furnished to the person in respect of whom it is made.

(*2*) No order made under sub-section (*1*) shall continue in force for more than one year from the date of the order made under section 22.

(*3*) On the expiry of an order made under sub-section (*1*), the Local Government may, if it is satisfied that such a course is necessary in the interests of the

the public safety, again make in respect of the person to whom such order related any order which is authorised by section 22 :

Provided that, before an order is made under this sub-section, a copy of the order which it is proposed to make shall be furnished to the person concerned, who may submit to the Local Government a representation in regard to such order. Any such representation shall be forwarded by the Local Government to the investigating authority for inquiry and report, and such authority, after inquiry conducted in accordance with the provisions of section 26, shall report thereon, and the Local Government shall consider such report :

Provided further that no order made under this sub-section shall continue in force for more than a year from the date on which it was made.

(*4*) Any order made under this section may at any time be discharged or may be altered by the substitution of any other order authorised by section 22 :

Provided that no such alteration shall have the effect of prolonging the period for which such order would have been in force.

(*5*) The provisions of section 24 shall apply to the enforcement of orders made under this section.

Penalty for disobedience to order.

28. If any person fails to comply with, or attempts to evade, any order (other than an order to furnish security) made under section 22 or section 27, he shall, on conviction by a Magistrate, be punishable with imprisonment for a term which may extend to six months, or with fine, which may extend to five hundred rupees, or with both.

Provisions as to bonds.

29. The provisions of section 514 of the Code shall apply to bonds executed under the provisions of this Part, with this modification that the powers conferred by that section on the Court shall be exercisable by any District Magistrate or Chief Presidency Magistrate, on application made on behalf of the Local Government.

Investigating authorities.

30. (*1*) As soon as may be after a notification has been issued bringing this Part into force, the Local Government shall appoint one or more investigating authorities

authorities for the purposes of this Part, and may appoint additional investigating authorities when necessary.

(2) Every investigating authority shall be appointed by order in writing, and shall consist of three persons, of whom two shall be persons having held judicial office not inferior to that of a District and Sessions Judge and one shall be a person not in the service of the Crown in India.

(3) The Local Government may by like order appoint persons to fill casual vacancies occurring by reason of death, resignation of office or otherwise on any investigating authority, but in so doing shall observe the provisions of sub-section (2).

Visiting Committees.

31. (1) The Local Government shall by order in writing appoint such persons as it thinks fit to be Visiting Committees to report upon the welfare and treatment of persons under restraint under this Part, and shall by rules prescribe the functions which these Committees shall exercise :

Provided that, in making such rules, provision shall be made for periodical visits to persons under restraint under the provisions of this Part :

Provided further that a person in respect of whom an order has been made under section 22 or section 27 requiring him to abstain from any specified act or to report himself to the police shall not be deemed to be under restraint for the purposes of this section.

(2) All rules made under sub-section (1) shall be published in the local official Gazette, and on such publication shall have effect as if enacted in this Part.

Power to make rules by Local Government.

32. (1) The Local Government may make rules prescribing the authorities before whom and the manner in which bonds under this Part shall be executed, and providing for the procedure to be followed regarding the notification of residence and reports to the police by persons in respect of whom orders have been made under section 22 or section 27.

(2) All

(*2*) All rules made under sub-section (*1*) shall be published in the local official Gazette, and on such publication shall have effect as if enacted in this Part.

PART III.

Condition of application of Part III.

33. If the Governor General in Council is satisfied that in the whole or any part of British India anarchical or revolutionary movements are being promoted and that scheduled offences in connection with such movements are prevalent to such an extent as to endanger the public safety, he may, by notification in the Gazette of India, make a declaration to that effect, and thereupon the provisions of this Part shall come into force in the area specified in the notification.

Powers exercisable when Part III is in force.

34. (*1*) Where, in the opinion of the Local Government, there are reasonable grounds for believing that any person has been or is concerned in such area in any scheduled offence, the Local Government may place all the materials in its possession relating to his case before a judicial officer who is qualified for appointment to a High Court and take his opinion thereon. If after considering such opinion the Local Government is satisfied that such action is necessary, it may make in respect of such person any order authorised by section 22, and may further by order in writing direct—

(*a*) the arrest of any such person without warrant;

(*b*) the confinement of any such person in such place and under such conditions and restrictions as it may specify:

Provided that no such person shall be confined in that part of a prison or other place which is used for the confinement of convicted criminal prisoners as defined in the Prisons Act, 1894; and IX of 1894.

(*c*) the search of any place specified in the order which, in the opinion of the Local Government, has been, is being, or is about to be, used by any such person for any

any purpose connected with any anarchical or revolutionary movement.

(*2*) The arrest of any person in pursuance of an order under clause (*a*) of sub-section (*1*) may be effected at any place where he may be found by any police-officer or by any other officer of Government to whom the order may be directed.

(*3*) An order for confinement under clause (*b*) or for search under clause (*c*) of sub-section (*1*) may be carried out by any officer of Government to whom the order may be directed, and such officer may use all means reasonably necessary to enforce the same.

Arrest.

35. Any person making an arrest in pursuance of an order under clause (*a*) of sub-section (*1*) of section 34 shall forthwith report the fact to the Local Government and, pending receipt of the orders of the Local Government, may by order in writing commit any person so arrested to such custody as the Local Government may by general or special order specify in this behalf:

Provided that no person shall be detained in such custody for a period exceeding seven days unless the Local Government so directs, and in no case shall such detention exceed fifteen days.

Search.

36. An order for the search of any place issued under the provisions of clause (*c*) of sub-section (*1*) of section 34 shall be deemed to be a search warrant issued by the District Magistrate having jurisdiction in the place specified therein, and shall be sufficient authority for the seizure of anything found in such place which the person executing the order has reason to believe is being used, or is likely to be used, for any purpose prejudicial to the public safety, and the provisions of the Code, so far as they can be made applicable, shall apply to searches made under the authority of any such order and to the disposal of any property seized in any such search.

Application of Part II, procedure.

37. Where an order (other than an order for arrest or search) has been made under section 34, the provisions of sections 26 to 27 shall apply in the same

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same way as if the order were an order made under section 22, save that, on receipt of the report of the investigating authority, the Local Government may, subject to the conditions prescribed by section 27, make any order which is authorised by section 34, and sections 23 to 27 and 29 to 32 shall be deemed to be included in this Part.

Penalty for disobedience to orders under this Part.

38. If any person fails to comply with, or attempts to evade, any order made under section 34 or section 37 other than an order to furnish security, he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

PART IV.

Persons already under executive control.

39. (*1*) On the expiration of the Defence of India (Criminal Law Amendment) Act, 1915, every person in respect of whom an order under rule 3 of the Defence of India (Consolidation) Rules, 1915, was in force immediately before the expiration of that Act, and who has in the opinion of the Local Government been concerned in any scheduled offence, shall be deemed to be a person resident in an area in which a notification under section 21 is in force, and the provisions of Part II shall apply to every such person accordingly; and every person who is on such expiration in confinement in accordance with the provisions of the Bengal State Prisoners Regulation, 1818, shall be deemed to be a person resident in an area in which a notification under section 33 is in force, and the provisions of Part III shall apply to every such person accordingly: IV of 1915. III of 1818.

Provided that, within one month from the expiration of the Defence of India (Criminal Law Amendment) Act, 1915, the Local Government may, subject to the conditions prescribed in the first proviso to sub-section (*3*) of section 27 as made applicable by section 37, make any order of restraint which is authorised by Part III in respect of any person who is in confinement in accordance with the IV of 1915.

the provisions of the said Regulation, and if such an order is so made it shall be deemed to be an order made under sub-section (*3*) of section 27 as made applicable by section 37, and the provisions of that Part regarding such an order shall apply accordingly.

(*2*) On the expiration of the Ingress into India Ordinance, 1914, as continued in force by the Emergency Legislation Continuance Act, 1915, any person in respect of whom an order was in force immediately before such expiration under section 2 of that Ordinance read with clause (*b*) or clause (*c*) of sub-section (*2*) of section 3 of the Foreigners Ordinance, 1914, shall be deemed to be a person resident in an area in which a notification under section 21 is in force, and the provisions of Part II shall apply to every such person accordingly:

V of 1914.
I of 1915.
III of 1914.

Provided that, within one month from the expiration of the Ingress into India Ordinance, 1914, the Local Government may, subject to the conditions prescribed in the first proviso to sub-section (*3*) of section 27, make any order of restraint which is authorised by that Part in respect of any such person, and if such an order is so made it shall be deemed to be an order made under sub-section (*3*) of section 27, and the provisions of that Part regarding such an order shall apply accordingly.

V of 1914.

PART V.

40. When a notification issued under section 3 or section 21 or section 33 is cancelled, such cancellation shall not affect any trial, investigation or order commenced or made under this Act, and such trial, investigation or order may be continued or enforced, and on the completion of any such investigation, any order which might otherwise have been made may be made and enforced, as if such notification had not been cancelled.

Effect of cancellation of notifications under section 3, 21 or 33.

41. (*1*) An order made under Part II or Part III, directing a person to remain or reside in any area in British India outside the area in which such Part is in

Effect of orders made under Parts II and III outside notified area.

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in force, shall be as valid, and enforceable in like manner, as if such Part were in force throughout British India.

(*2*) An order made under clause (*a*) of sub-section (*1*) of section 34 for the arrest of any person may be executed at any place in British India outside the area in which Part III is in force, and the same procedure shall be followed as if Part III was in force throughout British India:

Provided that, if the arrest is made outside the province of the Local Government which made the order, the report required by section 35 shall be made to that Local Government, and the maximum period of detention limited by the proviso to that section shall be extended to twenty-one days.

Orders under this Act not to be called in question by the Courts.

42. No order under this Act shall be called in question in any Court, and no suit or prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Powers of Act to be cumulative.

43. All powers given by this Act shall be in addition to, and not in derogation of, any other powers conferred by or under any enactment, and all such powers may be exercised in the same manner and by the same authority as if this Act had not been passed.

THE SCHEDULE.

(*See section 2.*)

(1) Any offence under the following sections of the Indian Penal Code, namely:—sections 121, 121-A, 122, 123, 124, 131 and 132. XLV of 1860.

(2) Any of the following offences, if, in the opinion of Government, such offence is connected with any anarchical or revolutionary movement, namely:—

(*a*) any offence under sections 124-A, 148, 153-A, 302, 304, 326, 327, 329, 332, 333, 385, 386, 387, 392, 394, 395, 396, 397, 398,

398, 399, 400, 401, 402, 431, 435, 436, 437, 438, 440, 454, 455, 457, 458, 459, 460, and 506 of the Indian Penal Code;

XLV of 1860.

(*b*) any offence under the Explosive Substances Act, 1908;

VI of 1908.

(*c*) any offence under section 20 of the Indian Arms Act, 1878.

XI of 1878.

(3) Any attempt or conspiracy to commit or any abetment of any of the above offences.

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Extract from the Proceedings of the Indian Legislative Council assembled under the provisions of the Government of India Act, 1915. (5 & 6 Geo. V, Ch. 61.)

The Council met at the Council Chamber, Imperial Secretariat, Delhi, on Wednesday, the 12th March, 1919.

* * * * *

CRIMINAL LAW (EMERGENCY POWERS) BILL.

His Excellency the President:—" Before calling upon Sir William Vincent, I think it would be well if I were to inform the Council of a ruling which I have given on the question of the necessity of Members of a Select Committee, who wish to put in a dissenting minute, signing the Report. 11-18 A.M.

" I have had this matter examined and have found that it has been the usual practice in the work of this Council for all Members of a Select Committee, who wish to append a minute of dissent, to sign the Report, and the reason of this is obvious. The Council has a right to know that the correctness of the Report as an account of the proceedings of the Committee, irrespective of differences of opinion upon its details, is undisputed, and this can only be secured by the signature of the Members.

" In the case of Members desiring to put in a dissenting minute, their signature to the Report means nothing more than this that they agree to the correctness of the Report. This has been the established practice of this Council, and as the custodian of the usages and practice of this Council, I have no alternative but to rule that a Member of a Committee wishing to put in a dissenting minute, can only do so when he has affixed his signature to the Report. I am aware that there is one exception to the practice I have described, but on that occasion no question was raised and the President's orders were not taken. I can only regard this instance as the exception which proves the rule but in no sense affecting the general practice of this Council.

" Further, there is no precedent for a minority Report being admitted, for the simple reason that the principle of the Bill is affirmed when the Bill is referred to a Committee, and so no question of principle can arise on the Report.

" It goes without saying also that no Member of a Committee can invalidate a Report by refusing to sign.

" I am aware that under rule 7 it is open to the President to take the opinion of the Council upon such a point. The practice, however, is so clear that I do not propose to adopt this course, and therefore I cannot allow any discussion on it.

" I note that the first three motions on the paper are based on an alleged incompleteness of the Report. It follows, however, from the ruling which I have just given to the Council that the Report is in no sense invalidated or rendered incomplete by certain Members refusing to sign, or by the consequent exclusion of the minutes of dissent which they desired to attach.

" The first three motions on the paper challenge the Report on the ground of its incompleteness. It appears impossible for Hon'ble Members to support these motions without challenging my ruling. I shall, therefore, have to rule these first three motions to be out of order, when we come to them."

The Hon'ble Sir William Vincent:—" My Lord, I beg to move that the Report of the Select Committee on the Bill to make provision in special circumstances to supplement the ordinary criminal law and for the exercise of emergency powers by Government be taken into consideration. 11-21 A.M.

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"My Lord, in addressing the Council on this motion, I do not propose to discuss in any detail the various modifications which have been made in the Bill by the Select Committee. They are clearly expressed in the Bill itself, and, I think, explained in the Report. But there are some matters of some importance to which I must refer. It will be within the memory, I think, of many Hon'ble Members of this Council that on the last occasion on which this Bill was under discussion, the Government gave three undertakings in respect of this Bill. The first undertaking was to make the Bill a temporary measure instead of a permanent one, in the hope that the Reform proposals from which so much is expected may do something to remove the danger which is now experienced from these conspiracies.

"In the second place, I promised to make more apparent what was already abundantly clear to my mind the fact that the application of the Bill was strictly confined to the activities of revolutionary and anarchical conspirators.

"In the third place, I promised to consider any other modifications in the Bill which non-official Members might wish to put forward in so far as I could do so without rendering the Bill ineffective for the purpose for which it was intended. My Lord, I contend that all these three undertakings have been amply fulfilled. The operation of the Bill has been limited to three years, and in the Preamble and the opening sections of the different parts of the Bill, Hon'ble Members will find modifications made which indicate clearly that the application of the Bill is rigidly restricted to movements of the character to which I have referred. In addition to this, in deference to the wishes of various Hon'ble Members, we have made a number of substantial modifications in the Bill. The Government regret that they could not go further to meet the wishes of Hon'ble Members in this matter, but they trust those Members of this Council who were in the Select Committee will admit that the Government has approached the case with the greatest care, and has been reasonable in its attitude towards those Members who put forward proposals for modifications of the Bill. If it had been possible to meet Hon'ble Members further, no one would have been more rejoiced than myself, but there are responsibilities which the Government of India have for the welfare of this country, for the maintenance of peace and tranquillity which they cannot subordinate to any other consideration.

"While I am on this subject, my Lord, I should like to advert to an insinuation that has been made that there was some form of compact or agreement between the Government and individual Members of this Council. It is my duty to repudiate that suggestion in the most emphatic terms. It is always the desire of Government to secure the co-operation of the Members of this Council, and more especially in a measure of this importance upon which the welfare of this country so much depends, and if by making the modifications we had been able to secure the support of Members, as I said before, Government would have been more than pleased. But there never was any agreement or compact, there was no compact entered into of any kind, and it is, to my mind, much to be regretted that any suggestion of that character should have been made.

"My Lord, I do not desire to-day to go over the whole of the old ground which was traversed at the last debate, but there are some weighty considerations to which I ask the earnest attention of the Members of this Council before I close my speech. I want the Members of this Council to believe that the Government is perfectly sincere in its conviction as to the urgent necessity of this Bill, that there is no Machiavellian plot at all against political agitation, and that there is no intention whatever to frustrate or defer the advent of reforms.

"Indeed, your Excellency, as one of the authors of the Reforms Report, would, I think, be the last to have allowed this Bill to be introduced had such a result been possible. We seek to safeguard India from criminal movements which though affecting a very small portion of the population have done much to discredit the loyalty of the great body of the citizens in the past. Finally, I want to make it clear that this Bill is not a Bill which will come into general operation. It cannot be applied indiscriminately all over India. It can only come into operation in certain circumstances of a special character, and then

only in areas in which these revolutionary or anarchical movements are prevalent. Further, in those areas it cannot be used in any way to attack the liberties of the law-abiding citizen. It can only be employed against criminals whose activities are really a menace to the whole State, and even in dealing with these men, every effort, so far as we could do so without rendering the Bill wholly ineffective, has been made to prevent any other than those manifestly guilty from being touched under the provisions of the law. My Lord, if there are Members in this Council who accept the necessity for this measure, accept the facts that I have stated, if they are satisfied that Government has really gone as far as is possible to meet them in modifying the provisions of the Bill, I ask them in all earnestness to pause before they oppose a measure which is framed in our judgment in the best interests of this great country whose welfare we all have at heart."

His Excellency the President :—" Mr. Patel's is the first motion on the paper and as a consequence of my ruling, I am afraid it is out of order."

The Hon'ble Mr. V. J. Patel :—"If your Excellency will hear me . ." 11-30 A.M.

His Excellency the President :—" I can only hear you if you do not discuss my point of order."

The Hon'ble Mr. V. J. Patel :—" Certainly. In the discussion of the motion that I have given notice of I will not at all touch your Excellency's ruling; I propose to discuss it from altogether a different point of view. I beg to move 'that the so-called Report of the Select Committee is both an incomplete and invalid document and it be therefore cancelled.'

The Hon'ble Sir George Lowndes :—" My Lord, I beg to point out that the Hon'ble Member has already infringed your Excellency's ruling. He has moved an amendment that the Report is incomplete while it has been ruled from the Chair that the Report is complete."

His Excellency the President :—"I am waiting until the Hon'ble Member shows me how the Report is incomplete. If he says it is incomplete in the fashion in which I have ruled that it is complete, I shall rule the Hon'ble Member out of order."

The Hon'ble Mr. V. J. Patel :—" I am much obliged to your Excellency. The Report of the Select Committee is both an invalid and an incomplete document. At the first meeting of the Select Committee, two preliminary points were raised. The first was whether the Select Committee could consider the principles of the Bill and recommend to the Council that the Bill should be dropped, and the second was whether the Select Committee could recommend to the Council that it was not within the competence of the Indian Legislative Council to enact the proposed law. The Chairman of the Committee gave his ruling that the Select Committee had no power to go into the principles of the Bill, and in his opinion the duty of the Committee was restricted to the examination of the several clauses of the Bill and the recommending of such alterations and amendments as it might think appropriate. With due deference to the high authority of the Hon'ble the Law Member, I respectfully submit that his ruling was wrong and probably misled several Hon'ble Members of the Committee into erroneous views as to their rights and duties as Members of the Select Committee.

His Excellency the President :—" On which point, Mr. Patel? I have ruled on the point that you cannot discuss the principles of the Bill in Select Committee. That ruling is as old as 1866, when Sir Henry Maine clearly laid it down that the principle was decided when a Bill was referred to a Committee, and that in the Committee it was only the points of detail that

could be considered. Please confine yourself to the other point that they were not competent."

The Hon'ble Mr. V. J. Patel :—"I take it then that I cannot challenge the ruling of the Chairman of the Select Committee on that ground?"

His Excellency the President :—"Not on the ground that you cannot discuss the question of principle."

The Hon'ble Mr. V. J. Patel :—"The second question raised was whether it was within the competence of the Select Committee to recommend to the Council that the Indian Legislative Council had no power to enact such a law.

His Excellency the President :—"That I should rule also was out of order, as the Committee were only the servants of this Council and the Council referred this Bill to the Committee to report to them on the details of the Bill and not on the competence of the Council to bring the Bill forward."

The Hon'ble Mr. V. J. Patel :—"If that is so, I bow to your Excellency's ruling and have nothing more to say."

His Excellency the President :—"I am afraid Mr. Patel has not convinced me that this motion is not out of order and, therefore, I must rule it is out of order. Mr. Khaparde, have you anything further to say? Be careful."

11-34 A.M. **The Hon'ble Mr. G. S. Khaparde** :—"Very careful. The second paragraph of the Report of the Select Committee is as follows:—

'Before we proceed to set out the modifications of detail which we have made in the Bill we may state at once that we do not propose to refer to the numerous amendments which were suggested in the Bill in so far as they were destructive of the general principles of the Bill. Amendments of this kind should be brought forward in Council which is the appropriate arena for their discussion.'

So this Report says that there were certain amendments moved which in the opinion of the learned Chairman of the Select Committee were destructive of the principle of the Bill, whatever that may be. These amendments have not been mentioned in the Report. I wish they had been so that the Hon'ble Council could judge whether they really were destructive of the principle of the Bill. Your Excellency would have liked to know what those amendments were and the reasons for which they could not be admitted. Another reason which, I think, is important is, that this Report by itself, seeing that it has not embodied certain amendments that were proposed, shows that it is incomplete in itself, and that being incomplete

His Excellency the President :—"That is the same point put in a different way, Mr. Khaparde."

The Hon'ble Mr. G. S. Khaparde :—"I am very sorry, your Excellency."

His Excellency the President :—"I do not wish to interrupt you, but I wish to appreciate your point before I rule you out of order."

The Hon'ble Mr. G. S. Khaparde :—"I thank your Excellency. My point of order* is that it is like a conversation that is recorded in Boswell's 'Life of Johnson.' There was some talk, I believe, about the abridgment of a report and Mr. Boswell suggested that this abridgment of the report was merely a cow with its tail cut off. Then Dr. Johnson replied 'No, it is not that; it is a cow reduced to the pro-

* 'That the Report of the Select Committee be not taken into consideration as it is incomplete.'

portions of a calf.' That is to say you let all the parts remain; you let them be where they are, only reduce them in proportion and present them in a smaller form. I take it that the Report of the Select Committee means all that took place in the Select Committee and the final conclusions that they arrived at. It does not mean the omission of any particular part, and in so far as this Report admits that so many things have been kept out of it, I am obliged to submit that I have made out my case that it is incomplete."

His Excellency the President:—"I am afraid I cannot agree with you, Mr. Khaparde. At any rate it was *ultra vires* of the Committee to discuss the principles of the Bill. The Chairman of the Committee ruled in the Committee that certain amendments went to the principle of the Bill. I laid down in the ruling just now that it was beyond the competence of the Committee to discuss the principles of the Bill, because those principles were settled when this Council in its wisdom referred the Bill to the Committee. I am not prepared to dispute the ruling of the Chairman of the Committee who was fully within his competence to make the ruling in the Committee itself, and I am afraid I must also rule your motion out of order."

The Hon'ble Rai Bahadur B. D. Shukul:—"Since I must bow to your Excellency's ruling, I need say nothing more on the point.† 11-38 A.M.

† 'That the Bill be re-committed to the Select Committee to complete its report.'

The Hon'ble Mr. Surendra Nath Banerjea:—"My Lord, I have the honour to move the following amendment:— 11-39 A.M.

'That the Select Committee's Report, together with the Bill and connected papers, be referred to Local Governments, High Courts and public bodies for criticisms.'

"My Lord, before I make my remarks on this amendment, your Excellency will perhaps permit me to express my acknowledgments to the Hon'ble the Home Member for repudiating in the most definite and emphatic manner the misrepresentation which has found considerable currency in the newspapers that there was a compact, some sort of an agreement, between a section of this Council and the Government in regard to the provisions of this Bill. That was an absolute misrepresentation. We tried to correct it in the newspapers; but a lie is hydra-headed; it dies hard. I hope and trust that after this specific statement of the Hon'ble the Home Member, the misrepresentation will not be allowed to disfigure the columns of any newspaper.

"My Lord, my amendment follows the lines of the recommendation which we made in a joint note of dissent signed by my friends, the Hon'ble Mr. Sastri and the Hon'ble Mr. Shafi, and myself. We recommended in that joint note that the Report of the Select Committee, the Bill and all connected papers therewith, meaning the notes of dissent, be referred to the High Courts, the Local Governments and public bodies for criticisms. My Lord, upon this point there was absolute unanimity of opinion among the non-official Members of the Select Committee; they all voted in favour of it. I hope that the same unanimity of opinion will prevail among the non-official Members of this Council including our European colleagues. My Lord, in a matter of this kind I venture to submit that Indian opinion ought to go far in determining the attitude and the action of the Government. The legislation which you have undertaken is legislation which affects, seriously affects, a section, it may be a small and microscopic section, but only a section, of the Indian community. I think, my Lord, therefore, our voice ought to form a paramount factor in any decision which the Government may arrive at in regard to this matter. My Lord, I desire to repeat what I have so often said—it is necessary to repeat this in season and out of season—that we are as anxious as the Government could possibly be for the maintenance of law and order and the eradication of anarchical and revolutionary movements. They can do us no good; they have done us grievous harm; they constitute a serious menace to our political progress; they cast a slur upon our fair name and fame, upon our reputation as a law-abiding people. My Lord, we realise the gravity of the situation and the measure of our responsibility in advising the Government to pause and to wait; but we

feel that the Government will accord to our advice the weight to which it is entitled as representing the voice and the considered judgment of my countrymen. My Lord, your Excellency's Government has not been insensible, I am happy to be able to say, to the expression of public opinion. It was in partial deference to that opinion that the Bill has been made a temporary measure, that its scope has been restricted to anarchical and revolutionary movements, and that modifications have been made in some of its provisions But, my Lord, public opinion is not satisfied. I am here to re-echo the voice of the saner section of my countrymen. Public opinion is not satisfied. We want the Government to pause and to reconsider the situation. And what could be more reasonable than that the Government should obtain and receive further light, further guidance, not from irresponsible critics, but from its accredited advisers, namely, the Local Governments, the High Courts and the recognised public bodies? My Lord, my amendment contemplates this and in moving it, my Lord, I am fortified by the action of the Government itself. You are prepared to postpone the consideration of the other Bill, which proposes to make a permanent addition to the law of the land. I submit that there is absolutely no reason why a similar, and indeed the same, procedure should not be followed in this case. I recognise that this is an emergent measure, but, my Lord, you possess full plenary emergent powers to deal with revolutionary and anarchical crimes, powers far more summary, far more drastic, than what is contemplated under the provisions of this Bill. But then it will be said, and it has been said, that if my amendment were accepted, there would be delay and the consequent prolongation of the agitation. My Lord, I am prepared to accept this view only in a limited and partial sense. I am free to admit that there will be agitation, that the agitation will be continued; but it will be allayed, it will not be the same sort of agitation that we are witnessing now. It will be a weak and feeble, a dead-and-alive sort of agitation, without life, without vitality. This concession to public opinion will have placed the public mind in a conciliatory mood. My Lord, I know something about political agitations. I am conversant, thoroughly conversant, with that game. My Lord, when the history of these times comes to be written, and if they care to remember such an insignificant personality as myself, they will set me down as perhaps the most obstinate, the most incorrigible, the most unyielding of political agitators of my time. I was associated with the greatest political agitation that this generation has witnessed, namely, that relating to the modification of the Partition of Bengal. My Lord, I was in the forefront of that fight. My Hon'ble friend Mr. Emerson knows all about it. Well, the Government of Lord Curzon and his advisers thought that if the Partition was carried out, if it was an accomplished fact, nothing further would be heard about it, and that the people would acquiesce in it, and the agitation would cease. There never was a more grievous blunder. The partition was carried out in hot haste without giving the people time to consider the situation, in view of its more recent developments. The agitation was continued, it spread like wildfire from town to town, from district to district, the whole country was ablaze with excitement; and a conflagration was set up, the expiring flames of which still linger in those revolutionary and anarchical movements to grapple with which this Council is assembled here to-day. I am anxious, my Lord, that this dismal chapter of our history may not be repeated. There is some chance, my Lord, of its being repeated if you do not give adequate time to the public to consider the situation.

" My Lord, ' Truth,' says the Latin proverb, ' is the daughter of Time.' *Veritas est filia ætatis.* Time is a great pacifier, a great mollifier. Put this case to that supreme of all tests; the crucible of time. Allow the public bodies to record their opinions, the High Courts to pronounce their judgments, and there is no institution in the land more venerated, which inspires a larger measure of confidence than these great tribunals of British justice, and you will have created an atmosphere free from prejudice and excitement favourable to the dispassionate consideration of the grave issues involved in this Bill. My Lord, the Government says that the Bill is not severe, it is not drastic, it is not a menace to public rights and, as the Hon'ble the Home Member has just observed, that no one need concern himself about it unless he be an anarchist or revolutionary. On the other hand, the public hold a wholly different view; they

say that the Bill is pregnant with danger, and the magnitude of the public fears and apprehensions may be gauged from the fact that Mr. Ghandi has been able to start a campaign of passive resistance against the Bills. You and I may condemn it, but it is an index of the situation, and we have to allay that situation. The proper solvent would be the abandonment of the Bill or its postponement until the Reforms proposals have become the law of the land. But as the Government is not prepared to do that, I submit that it is the supreme duty of Government to allow the public bodies to express their opinions, and the High Courts and Local Governments to pronounce their judgments, and thus help to bring about a better state of things than that which prevails at the present moment.

"And, my Lord, where is the necessity for hurry? You have got the Defence of India Act. It will be in operation six months after the conclusion of peace. That will bring us down, on a moderate computation, to the 31st December 1919, and by that time this Bill, even if postponed to the Simla Session now in order to enable a reference being made to Local Governments and High Courts, will have become the law of the land.

"My Lord, there is also another argument which I desire to place for the consideration of your Excellency's Government, in support of my amendment. The Reforms proposals will have been introduced in the form of a Bill in Parliament after probably the Easter recess, that is to say, towards the end of April. If the Bill is a proper one—and I have no doubt it will be a proper one—it will have a soothing effect on the Indian public, and Indian public opinion will be in a less excited mood to consider a Bill of this kind. At the present moment moral and social forces of an irresistible character are arrayed against it. I desire that they may be enlisted in your behalf; that they will be enlisted in your behalf I have no doubt if you will give them a chance, if you allow the Bill to be introduced in Parliament and these various public institutions to speak out their minds. When by waiting a little, you secure such a large advantage, it seems to me, my Lord, with all respect, that it is unwise and inexpedient to hurry the Bill through this Session. I can well imagine your difficulties. The Government and the people are alike interested in passing the Reforms scheme through Parliament. The reactionaries in England are taking the fullest advantage of the Report of the Rowlatt Commission. They will try to block the way. They will perhaps say 'Deal with the anarchists first, and then we shall allow the Reforms Bill to pass through Parliament.' My Lord, to this you have an unanswerable reply. You have the Defence of India Act. The Defence of India Act does not expire till the 31st December 1919, according to my computation, and by that time you will have fortified yourself with this Bill which will have become law in the month of September next. My Lord, you have to look to English opinion, but you have also to look to Indian opinion, and to Indian opinion as profoundly influencing the trend of English public opinion.

"My Lord, I do not know that I need detain this Council any longer. To accept this amendment would be wise and expedient, it would mollify the situation. My Lord, it would be no sign of weakness but of strength. It would be the expression of a deferential attitude towards public opinion, which would gratify public opinion. It will help to dissipate the clouds of mistrust and suspicion which to-day hang thick and dark over the public mind of India. Above all, my Lord, it would be worthy of a great Government now about to enter upon a new period of responsibility in conformity with the spirit of its own gracious message, and the immemorial traditions of British rule in India.

"With these observations, I desire to commend my amendment to the acceptance of this Council."

The Hon'ble Khan Bahadur Mian Muhammad Shafi:— 11-55 A.M.
"My Lord, I rise to offer my cordial support to the motion which has been placed before the Council by my friend the Hon'ble Mr. Surendra Nath Banerjea with his usual earnestness and eloquence. I acknowledge with pleasure and gratitude the most conciliatory attitude which was adopted by the official majority in the Select Committee towards some of the

amendments which the Indian Members of the Select Committee placed before them for their consideration. They met us more than half-way, but in so far as this particular motion is concerned, as has already been mentioned by the Hon'ble Mr. Surendra Nath Banerjea, the official majority overruled the unanimous recommendation of the non-official Members of the Select Committee. It has thus become necessary for my Hon'ble friend to place before this Council the same proposal which was placed before the Select Committee and supported by the unanimous non-official vote.

"My Lord, I support the motion before the Council on three principal grounds.

"The first ground is this. Under ordinary circumstances, in accordance with the usual procedure of this Council, this particular Bill on its introduction would have been published in the official gazette and circulated for opinion amongst the Local Governments as well as among representative bodies. That procedure was not adopted in the first instance. We contend that that procedure ought to be adopted now; that the Report of the Select Committee should be circulated amongst Local Governments, High Court Judges and public bodies for opinion. My Lord, it is my humble submission that departure from the ordinary procedure, as invariably observed in this Council, is justified only in cases of emergency, and I contend that no emergency of the kind which would warrant such departure has arisen in the present case. My Lord, I belong to a school of Indian politics the members of which, because of their deep-rooted feeling that the future welfare of their country lies within the British Empire, have always consistently and readily supported the Government in all cases of emergency with reference to every measure that the Government has thought fit to adopt in order to meet such emergency. We have never hesitated, even at the risk of personal danger, to support the Government on occasions like these. Had it been pointed out in the last debate in this Council, had it been pointed out to us in the Select Committee that an emergency of this kind had arisen, and had facts been placed before us which would have convinced us not only that the emergency had already arisen, but even that there was a fear, an immediate fear, of such an emergency arising, I for one would have been only too ready to give my support to the Government for the immediate enactment of this measure. But, my Lord, no facts were placed before us either in this Council or in the Select Committee calculated to convince us that such an emergency had arisen. My Lord, a hint has been thrown out that a certain class of people in a certain part of the country who are now interned will at no distant date have to be released. With reference to that class of people may I remind the Council that in the Provincial Legislative Council of Bengal only the other day an Indian member brought forward a Resolution for their immediate release, and the whole of that Council, except the mover of the Resolution, absolutely opposed such a motion and negatived the Resolution, so much so

The Hon'ble Sir William Vincent:—"I think the Hon'ble Member is not quite correct in saying that they opposed the motion. They abstained from speaking or voting on it; I think that is the furthest they went."

The Hon'ble Khan Bahadur Mian Muhammad Shafi:—"With all deference, if my recollection is correct one Indian Member (or two) very strongly opposed that Resolution. And after carefully reading those speeches I personally am convinced that they were perfectly in the right in opposing that Resolution. There was no justification made out by the mover in support of his proposal that those internees should be released. Well, my Lord, in any case the mover of the Resolution stood all by himself and the Resolution was in consequence rejected; so that even the local Council of that particular province is not in favour of the release of the internees in that part of the country. The Defence of India Act is still in force and will continue to be in force for six months after the conclusion of peace. It is clear, therefore, that no emergency of the kind which would justify an absolute departure from the ordinary procedure of this Council, which has invariably been observed in the past, has arisen; and, in consequence, I submit that on this first ground

the motion placed before the Council by my Hon'ble and learned friend is worthy of acceptance. The second ground on which I support this motion is this. The feeling against the hurrying through of this measure through Council as voiced in the country is both widespread as well as deep. My Lord, I was a Member of a Legislative Council before the Morley-Minto reform scheme. Since then I have been a Member either of a Provincial Legislative Council or of this Imperial Legislative Council continuously without a single break for the last ten years. During my experience as a Member of a Provincial Council, as well as of this Council, I do not recollect a single occasion on which a Government measure has been opposed with such complete unanimity, complete unanimity amongst non-official Members belonging to every class and every shade of political opinion as in this particular instance. And, believe me, that this complete unanimity is an absolutely correct indication of the feeling as it exists in the country from north to south, and east to west. My Lord, even those members of the public who recognise that the proposal for passive resistance advocated by Mr. Gandhi is not only absolutely unjustifiable, but is one which every right-minded citizen of the Empire should have no hesitation in condemning are opposed to this Bill. To-day I have received telegrams informing me that the Provincial Muslim Association of the Punjab and the United Provinces Muslim Defence Association at Allahabad have already condemned that movement, but it is significant that even these in the resolutions which they have adopted have expressed their disapproval of the Rowlatt Bills. This significant fact is, I submit, conclusive evidence of the submission which I have made to your Excellency and to your Excellency's Government that feeling in the country is absolutely unanimous against the hurrying through of this measure in the manner contemplated. I venture to submit it is in the highest degree inadvisable to ignore that feeling and to seek to pass this measure in this Session without inviting the opinion of Local Governments, High Courts and representative bodies.

"The third ground on which I support the motion placed before the Council by my venerable friend, is based upon political expediency. There are members of your Excellency's Government occupying the ministerial benches amongst whom there are statesmen, administrators, for whose political insight I have had the highest opinion ever since I came into contact with them. I appeal to them whether, in the circumstances I have described, it is politically expedient to proceed further with the measure without inviting the opinions of the authorities mentioned in the motion. I appeal to them with all the earnestness at my command, I appeal to your Excellency with all the earnestness at my command, as a sincere well-wisher of your Excellency's Government, whether it is politically expedient to adopt the course which you propose to adopt. It is, believe me, as a sincere well-wisher of the British connection that I make that appeal and I trust that the appeal will not go unheeded."

The Hon'ble Mr. Kamini Kumar Chanda :—"My Lord, as the next amendment* which stands in my name is much the same as this, I think with your Excellency's permission it would be convenient and save time if I spoke on the Resolution now. The grounds on which I intended to ask for republication of this Bill have mostly been placed before the Council in the two eloquent speeches which we have just listened to. I entirely associate myself with these speeches, except in regard to a small passage in the speech of my Hon'ble friend Mr. Shafi. There was a Resolution moved in the Bengal Council by the Hon'ble Mr. Dutt in which he asked the Government to grant a general amnesty to all the persons in confinement. That was opposed by the Government and two Bengali gentlemen also spoke. The Hon'ble Sir Henry Wheeler speaking on behalf of the Bengal Government opposed the Resolution, but he admitted that the position in Bengal had improved and he said that the Government had let out more than two-thirds of the persons interned and that there were only 365 left. It was further contemplated to grant home domicile to some. This point is not exactly the same as it was put

12-8 P.M.

* 'That the Bill, as amended by the Select Committee, be republished and circulated for the opinion of, among others, the High Courts and Chief Courts.'

The Hon'ble Khan Bahadur Mian Muhammad Shafi:—"My Lord, I have the official proceedings in my hand and there it is said 'the Resolution was then put and lost.'"

The Hon'ble Mr. Kamini Kumar Chanda:—"I simply wanted to point out there was no close connection between the point and the motion before the Council. However, this is not a matter that we need quarrel about. As regards Bengal there is the admission of the Bengal Government that the position had very much improved. But leaving that aside and coming to the motion before us, in addition to the grounds which have been placed before the Council in such eloquent terms by the Hon'ble Mr. Banerjea and the Hon'ble Mr. Shafi, I wish to add one or two, in the first place rule 25 of the Rules for the Conduct of Legislative Business says 'The Select Committee shall, in their report, state whether or not in their judgment the Bill has been so altered as to require re-publication.' If the Council will take the trouble to inquire they will find that in the Bill consisting of 42 clauses and a Schedule 65 alterations have been made by the Select Committee; and no less than 25 of the clauses of the Bill have been amended, the Titles, both short and long, the Preamble and the Schedule have also been changed. You cannot say that there have not been substantial amendments in the Bill. The majority of the Select Committee say in their report 'it will be observed that all the amendments that we have made in the Bill are amendments in favour of the subject.' I shall show presently that this statement is not correct. It is erroneous, and I invite the Council to refer to clause 20 of the Bill as originally drafted and as amended. Clause 20 of the Bill as originally drafted says 'If the Governor General in Council is satisfied that movements which are in his opinion likely to lead to the commission of offences against the State are being extensively promoted'. That is to say 'offences against the State'. These offences are defined in clause 2 of the Bill. It means offences in Chapter VI of the Indian Penal Code. Chapter VI, I may inform the Council, consists of 11 sections, 21 to 30 *plus* 124-A. Now in clause 20 as revised it is said 'If the Governor General in Council is satisfied that anarchical or revolutionary movements which are in his opinion likely to lead to the commission of scheduled offences are being extensively promoted'. In place of offences against the State we find scheduled offences. What are these? We refer to the Schedule and find in the revised Bill the following appears 'Any offence under sections 124-A, 148, 153-A, 302, 304, 326, 327, 329, 332, 333, 385, 386 and so on. I will not weary the Council by enumerating them all. Then further it says 'any offence under the Explosive Substances Act' and 'any offence under section 20 of the Indian Arms Act.' This, my Lord, is not a trifling matter. What does it mean? It means that you are placing the liberty of the subject at the mercy of the executive. You are empowering the prosecutor to exact a bond from the accused to keep the peace. You will enable the prosecutor to compel the accused to dance attendance at police-stations. You empower him to place a man in confinement at any place he pleases, no matter whether the place is very insanitary, no matter whether the climate is unsuited to his constitution, the place may be infested with tigers or poisonous snakes. I am not drawing on my imagination, I actually have such a case in mind. No doubt the taking of a bond is in the Code, but the order is passed by a judicial authority, and the man has a right of appeal, if necessary, up to the High Court. This power has been taken away and you empower the executive to take this action against him.

"And what has the Select Committee done? They claim that all the amendments which they have made are to the advantage or for the benefit of the accused. Is that so, my Lord? I will just show to the Council that there are 50 offences more than in the original Bill, the commission of which will entitle the Government to put this part of the Bill into operation. Is it correct to say that all the amendments that you have made are to the benefit of the accused, and can you, on this ground, refuse to republish the Bill? That is my first submission, my Lord.

"Now, in the second place, we have just heard both from the Hon'ble Mr. Banerjea and Mr. Shafi that the whole of the Indian members are

unanimous in asking for the republication of the Bill, and as the Hon'ble Mr. Banerjea has pointed out, it is the Indian public opinion in a matter like this which counts.

"Now assuming that the claim made by the majority Report is correct, and that all the amendments that have been made are in favour of the subject, what then? There is no rule which says that you should republish the Bill only when the amendments are against the subject. He is not the only person concerned. What about the estimable gentlemen of the Bengal Chamber of Commerce, what about Lord Sydenham and Sir Valentine Chirol. Supposing I had a power-of-attorney from any of them could I not demand that the Bill be published. Of course you may say that it is a very technical matter, merely a point of law. But a point of law cannot be ignored when you are making a law. And I submit that even after the publication of the Report of the Select Committee, we are entitled to ask that the Bill should be re-published.

"Now coming to the most substantial objection, my Lord, what is the object of the publication of a Bill? My Hon'ble friend Mr. Shafi has pointed out that by adopting a certain course regarding the introduction of the Bill in the Council under rule 23 of the Rules for the Conduct of the Legislative Business you avoided discussion of the Bill at a certain stage. Now I wish to amplify it a little. What is the object of the publication of a Bill? It cannot be anything else than an invitation to the public, to the people concerned, to examine the Bill, to see if the provisions of the Bill will suit the conditions of the locality or the community to which it will apply, to see if any modifications are required. Surely it will take some time. They must study the Bill, see the case of the Government for introducing that Bill, consult the opinion of those who can give them competent advice in regard to a matter like this, and then formulate their views and publish them either in the press or send them direct to this Council or to the Hon'ble Members of this Council. Now, my Lord, in this connection may I also point out some clause in the rules for the conduct of the business of this Council which says that the Report shall be made not sooner than three months. The rule says 'such Report shall be made not sooner than three months from the date of the first publication in the Gazette of India.' This shows that you must not report within three months

The Hon'ble Sir George Lowndes:—"My Lord, I regret to interrupt the Hon'ble Member. It is a most objectionable practice to read only half of a rule and leave out important words. My Hon'ble friend Mr. Chanda stopped reading that portion of the rule when he came to the words 'unless the Council orders the report to be made sooner.'"

The Hon'ble Mr. Kamini Kumar Chanda:—"I stopped there because I intended just to emphasise the intention of the rule which is that the Committee shall not report within three months unless the Council orders the report to be made sooner. But the usual course is that the Committee shall not report before three months. But what is the intention of this rule? It is simply to give the public ample time to consider the matter. What have you done in this case? In the first place, as my Hon'ble friend Mr. Shafi has pointed out, you have departed from the usual form and under rule 23 of the Rules for the Conduct of Legislative Business published the Bill together with the Statement of Objects and Reasons which accompany it. The rule says 'The Governor General, if he sees fit, may order the publication of a Bill, together with the Statement of Objects and Reasons which accompanies it, in such Gazettes and languages as he thinks necessary, although no motion has been made to introduce the Bill'. But that is not usually done. The usual course is to ask for leave to introduce the Bill and then introduce it. Even apart from this, we usually find there are three stages during which, if the usual course is followed, the public have a right to express their views. In the first place, we find that before introducing a Bill, it is first referred to the Local Governments for opinion and also to the public for opinion, thus the Government of India obtain the views of the Local Governments and of the public in the first instance.

That is the first stage, and the public have a right to express their views on any measure brought forward by the Government. We know it is frequently done, and I myself had the honour during the last years of being called upon to express my views on matters which have engaged the attention of the Council.

"The second stage is when these reports are received, they are published in the form of a Bill, and then the Member in charge of it asks for leave to introduce the Bill and the Bill is introduced, discussed and passed. There is also another process, which is not always followed but sometimes followed, that is to say, after receiving the Reports of the Local Governments, the Government of India sometimes convenes small committees or conferences to discuss these matters. For instance, this course was followed last September as regards the Bill to amend the Provincial Insolvency Act, and I had the honour of being invited to serve on the Committee. In that Committee all the various questions were discussed and then the Bill was drafted. In some cases such a course is not followed, but still the public have an opportunity of expressing their views on any matter that may be engaging the attention of the Government.

"Then the next stage comes. The Bill after it is introduced in the Council is then circulated for opinion, and then the motion is made for reference to a Select Committee. There the matter is again fully discussed; the public express their views which are placed before Government.

"Now here what are the processes that have been followed in regard to this Bill? We at once just jumped into the third stage when the Hon'ble the Home Member moved for reference to the Select Committee on the 6th ultimo. One cannot understand what is the great urgency in regard to this matter that the Government should have been compelled to adopt the extraordinary course that they have followed. Why is it so? If there was any measure, my Lord, in this Session that was extremely urgent, that was the Excess Profits Duty Bill. You had to pass it this time, otherwise you cannot pass your Budget. As a matter of fact we have already incorporated the estimated proceeds of this duty in the Financial Statement. Therefore that was a matter of great urgency. On the other hand, Government had never thought of this matter till the other day because in September last we knew the Government did not intend to have .

The Hon'ble Sir William Vincent:—"May I ask the Hon'ble Member to state his grounds for making that statement?"

The Hon'ble Mr. Kamini Kumar Chanda:—"That was in September. That was my reading of the Hon'ble Sir William Meyer's speech in Council, when he said that there would probably be no necessity for taxation this year. However, let that pass. In any case we cannot deny that there was extreme urgency in regard to that measure, but what has happened? Here we find you have consulted Local Governments, the High Courts and Chief Courts, and why? What has the High Court to do with a fiscal measure like this? Is it possible that any matter arising out of the Bill will ever come before the High Court? Here you have considered it necessary to consult High Courts and Chief Courts in regard to a fiscal measure, whereas in this other case, where we complain that there is no urgency, you are going to introduce a measure of a character which will create new rules of evidence, enact rules of procedure, which if anything reminds of the days of the good old Kazi, and you do not think it necessary to refer to the High Court or to the Chief Court, or take the opinion of a lawyer. Why is that, my Lord? I submit there is no explanation of this. I respectfully invite Government to explain this matter. This question was put on the last occasion by many of us as to where was the urgency for this measure, why this hurry? I listened with respectful attention to the lucid speech of my Hon'ble friend the Law Member. I have read the eloquent speech of the Hon'ble the Home Member, and I have read with attention the very strong speech of my friend the Hon'ble Sir Verney Lovett. But is there any explanation, my Lord, of this hurry? Reference was made on the last occasion to the fact that the Defence of India Act was still in force. Why then is there

any need for this hurry; there could be an Ordinance. Then the Hon'ble the Law Member said this, my Lord:—

'What is the practical remedy proposed in this Council? Well, we have two; let me deal first with the no doubt practical suggestion, in a way, of my friend, Mr. Surendra Nath Banerjea. He says 'You have got powers under the Defence of India Act which will last some time yet. Use them. After that pass an Ordinance to the same effect and use it for six months. Thirdly, you have got on the permanent Statute-book Regulation III of 1818. Use that.' Well, if I may take that in any sense as a mandate from Members of this Council, it is a mandate for repressive legislation of a far worse description than what we are now proposing.'

"Now I accept that statement of the Hon'ble the Law Member, but, my Lord, what is the bar to your Excellency passing an Ordinance on the same lines as this Bill? Could you not do that? What is the objection to an Ordinance passed by your Excellency which will take the place of the Bill here? The Ordinance need not be of such a repressive character; it can be on the same lines as the present Bill, so that argument does not hold. Why must we have this Bill passed by the vote of this Council? Is there any difference between a Bill passed by the official block in this Council and an Ordinance passed by your Excellency? You are going to pass the Bill in the teeth of the opposition of the whole of the Indian Members simply because you have an official majority. What is the difference between this and an Ordinance passed in an executive character? A question was put by the Hon'ble Mr. Jinnah as to whether the votes of Indian Members counted for anything in the estimation of Government. To this the Hon'ble the Law Member again replied as follows:—

'If we are asked to surrender our own judgment, maturely and carefully come to on a very difficult question of policy, it is impossible for us to do so even in the unanimous opinion of Non-official Members who are not in the position of responsibility in which the Government is.'

"May I, with reference to this, make a request of the Government, my Lord. Will you remove the mandate and leave the official members free to vote just as they think right and not according to mandate, as you did last year in the case of the Income-tax Bill? Do it and I think it will make a great difference, and see what the result will be. I say, my Lord, there is absolutely no cause for hurry. It is just like a passenger who is travelling by the Punjab mail to Calcutta, sitting up and packing his hold-all at Allahabad because he would get down at Howrah. You could very well wait and see what happens.

"My Lord, there is another aspect of the matter. You are going to pass this Bill with a view to deal with the revolutionary movement in Bengal and other places. Well, have you had an inquiry as to the cause of that movement? That was not referred to the Rowlatt Committee. But we can find some answer; there is something in that Report although it was not in the terms of reference to that body. It is stated in that Report in one place that Barin Kumar Ghose came to Bengal from Baroda in 1902 to organise a revolutionary party and he failed and went back. But when he came back in 1907 after the partition of Bengal he was able to do it. What happened in the meantime in Bengal which made possible for Barin Kumar Ghose to do in 1907 what he could not do in 1902? It was the policy pursued by Lord Curzon which was a contributory cause. It was found that the Government did not pay the slightest heed to Indian public opinion, rejected it with contemptuous and absolute indifference. It was this, my Lord, which drove these young men to get out of hand. When they found that the united opinion of the nation counted for nothing, it was then that this political agitation, as the Hon'ble Mr. Banerjea has pointed out, was driven underground and this revolutionary movement was given a start. And the first false step by a tragic necessity gradually leads to something more dangerous. That has happened in Bengal and other places my Lord. And are you quite sure that the procedure which you are now adopting will not help that movement instead of helping you to put it down? When it is found that you are riding roughshod over the unanimous vote of the Members of this Council, nominated and elected, who moreover have the whole country at their back, do you think that will not deepen the resentment of these young men? They are too young to judge correctly, and do you not think that that will make matters worse and instead of being able to keep matters in hand, you will simply drive it more underground. My Lord, I respectfully

invite your Lordship's attention to these matters and join my Hon'ble friend in asking the Government to allow the Bill to be republished for the opinions of the High Court and other bodies. If afterwards you find there is need to have a law, proceed in the manner that the opinions seem to indicate, and I am sure the Government will get support from the Members of this Council if not from outside.

"With these words I support the motion."

12-35 P.M **The Hon'ble Dr. Tej Bahadur Sapru** :—"My Lord, I do not wish to traverse the ground which has already been covered by my friends the Hon'ble Mr. Banerjea and the Hon'ble Mr. Shafi. My Lord, my Hon'ble friend Mr. Banerjea has referred to various grounds and to various reasons and asked your Lordship, in view of those reasons, to republish this Bill so as to obtain the opinions of the Local Governments, the High Courts and the general public. My Lord, it is not for me on this occasion to refer to the gathering storm outside the Council Chamber. Every one of us knows it and I sincerely hope and trust that our worst fears will not come to be realised. But I cannot shut my eyes to one important circumstance, and that is this. The Preamble of this Bill, even as it stands at the present moment, says :—

'Whereas it is expedient to make provision that the ordinary criminal law should be supplemented and emergency powers should be exercisable by the Government for the purpose of dealing with anarchical and revolutionary movements.'

"My Lord, it appears from that that the Government have persuaded themselves that the ordinary criminal law requires to be supplemented and that there are certain emergency powers which should be exercisable by Government for certain definite purposes. My Lord, as to whether the ordinary criminal law requires to be supplemented, as to whether the present legal machinery has broken down, as to whether it is impossible for Courts of law to deal with these offences effectively having regard to the present position of the law, I submit the best persons entitled to advise your Lordship in matters like these would be those very persons who have got to administer that justice from day to day. My Lord, I therefore see absolutely no reason why the Government of India should decline to take the opinions of the Judges of the High Courts in various parts of this country. They will either tell you in so many words that the present state of the law is unsatisfactory, that it is inadequate, that it does not enable Courts to deal with these offences in an effective manner, or they will tell you that the law, as you propose it to be passed, goes further than the necessity of the occasion requires. My Lord, supposing they are persuaded to take the same view, supposing they come to the same conclusion as the Government of India has come to, the position of the Government of India would, I venture to submit, be infinitely stronger when that opinion has been expressed by the High Courts. If, on the other hand, the High Courts think that the present legal machinery has not broken down, that the present law is effective, or that if it is ineffective it requires to be altered in certain directions then, my Lord, I submit there will be a very strong case for a reconsideration of the entire measure. Therefore, my Lord, I do not see at all any justification why the Government should be in such a hurry as to the passage of this measure now without taking the opinion of the High Courts.

"My Lord, the people of this country have during the last 50 or 60 years come to cherish great faith in the justice of the High Courts, and they believe that, while it may be impossible to come to correct conclusions when political passion is roused in assemblies which are professedly of a political character, in the serene atmosphere of the High Court it is quite different. Therefore, I will beg of your Lordship to consider whether it is not right, whether it is not expedient, whether it is not proper, that you should invite the opinions of those very learned Judges who have been administering justice and who are best able to tell you what is the present state of the law. My Lord, I am aware that in the Committee which you constituted there were three learned Judges. One of them was Mr. Justice Rowlatt, another was Sir Basil Scott of the Bombay High Court, and the third was Mr. Justice Coomarswamy Sastri of the Madras High Court. Now, my Lord, I have the highest possible respect for every one

of those three learned Judges. I do not question their ability; I do not question their honesty of purpose; but at the same time I cannot forget that, so far as Mr. Justice Rowlatt is concerned, he has not had any Indian experience; he has not been administering justice in the Indian Courts. Therefore, his knowledge of the present state of the law and its relation to these crimes cannot be first hand. I am bound to attach the fullest possible weight to the opinions of Mr. Justice Coomarswamy Sastri and of Sir Basil Scott, but at the same time, my Lord, I cannot forget that the High Courts in India contain many more Judges than these two learned Judges, and that we are entitled to know especially what the Calcutta High Court which has had so much to do with cases of these crimes, thinks on the subject and what are the recommendations which it proposes to make with regard to any alteration of the law. Let us not be deprived of those benefits; let us not be deprived of the opportunity of finding out what dispassionate judicial opinion thinks about these matters.

"Then, my Lord, the amendment of my Hon'ble Colleague also suggests that these Bills should be referred to the Local Governments and to public bodies for criticism. So far as the Local Governments are concerned, my Lord, we do not know what they think with regard to the recommendations of the Rowlatt Committee or with regard to the specific clauses in this Bill which are intended to meet a situation such as is said to exist at the present moment. As regards public opinion, my Lord, give it time to think over this matter dispassionately. At a time like this, when political passion is raging high, you cannot expect that people can think about a measure like this dispassionately. There is bound to be strong political feeling in the country; already we are witnessing its existence. And, my Lord, I submit that if you only postpone this measure so as to give the public time to think over it dispassionately, it may be that you may find that the public may take a view somewhat less strong than they are taking now, though for my part I am free to confess that I doubt very much whether the public in this country will ever reconcile themselves to judicial discretion being supplanted by executive action.

"My Lord, on these grounds I strongly support the motion of my friend Mr. Banerjea as being in the highest degree expedient and as being also in the highest degree consistent with justice."

The Hon'ble Maharaja Sir Manindra Chandra Nandi:— 12-44 P.M.
"My Lord, it affords me great pleasure to support the amendment which my Hon'ble friend, Mr. Surendra Nath Banerjea, has just placed before you. I have tried my very best to understand and appreciate the point of view from which the Government are so anxious to rush the Bill, which is under our consideration at the present moment, through this Council, but, my Lord, I confess I have failed so far to discover the reason for this hurry. It is now recognised that the Defence of India Act will continue to be in operation till probably the end of this year, and, besides this Act, there is the old Bengal Regulation III of 1818, which invests the Government with almost plenary powers to deal with all sorts of anarchical and revolutionary crimes. If from now and the end of this year there should be in any part of India any unhappy re-appearance of such crimes, the Government will be able to deal with them with the existing weapons in its legislative armoury which I have already mentioned. My principal reason for supporting Mr. Banerjea is my conviction that, if the Select Committee's report is referred to Local Governments and High Courts and to public bodies for their considered and matured criticisms, the Bill will stand a chance of being very considerably improved. I have got one more additional reason to support Mr. Banerjea. If the present Bill is not passed by the Council this Session, it will not very materially exercise the public mind which will be certainly a very great advantage for both the Government and the people. We all realise how the Reform Bill, which, I hope, will not be long in coming, will badly stand in need of all the attention and consideration the country can give to it, unaffected by any distractions and distempers. As soon as the Reform Bill is passed, both the Government and the people will be in a better position to consider all the aspects of the present Bill from a new and perhaps a wider angle of vision. I would beg of the Government not to give any handle or opportunity to agitators of

any kind to create any further discontent and mischief in the country. Time is a great healer, and if this Bill is put off for consideration till the next Session of the Council, the country will forget and forgive many things. My Lord, I, therefore, appeal to your Excellency to accept Mr. Banerjea's motion and give the country and this Council time to think over it again."

12-47 P.M. **The Hon'ble Mr. P. J. Fagan**:—"My Lord, it must, I think, be admitted, that at first sight there is some reasonable ground for the amendment moved by the Hon'ble Member. On a cursory glance it might seem not altogether inappropriate that in dealing with a measure of this kind, even at this stage, when the Select Committee has completed the arduous labour involved in a minute examination of the provisions of the Bill, it should be allowed to follow that somewhat lengthy and devious course which is generally found to be appropriate for legislation in this country. But, my Lord, the circumstances and conditions surrounding the initiation and introduction of this measure are of a very special nature, and it seems to me that the Hon'ble Mover and other Hon'ble Members who have supported this amendment have scarcely accorded sufficient weight to the consideration of those circumstances. The Bill is the outcome of the deliberations, the prolonged and laborious deliberations and the considered recommendations of a peculiarly highly qualified Committee, of a Committee particularly rich in judicial talent. That Committee was appointed to investigate those widespread anarchical and revolutionary movements which have recently menaced public law and order, peace and safety, in this country. The Bill, my Lord, embodies the recommendations of that Committee, and in embodying them it scrupulously avoids anything in the direction of excess, any deviation from those recommendations being in the direction of defect. Far be it from me to speak except with the profoundest respect of those authorities to whom the Hon'ble Member would refer this Bill; but under the circumstances to which I have referred, it seems to me not unreasonable to ask what is to be gained by a prolonged and voluminous literary discussion of the kind which the Hon'ble Member appears to desire. Have we not here to-day in this Council the *élite* of the non-official political intelligence of India, fully prepared and fully competent to subject the provisions of the Bill to the most detailed examination? When I consider the lengthy vista of discussion which stretches down the ample limits of to-day's agenda, I cannot doubt that every hole and corner, every nook and cranny of this measure will in turn—it may be after the shades of night have fallen—be subjected to the searchlight of the keenest and the most acute criticism. I find it difficult to believe that when this much-to-be-pitied measure shall have happily emerged from the prolonged course of lingering inquisitional torture with which it is threatened, anything will remain unthought or unexpressed which human intelligence can think or express about the merits and demerits of this measure. My Lord, under these conditions, I ask once more what is to be gained by procrastination and delay? The measure is, indeed, clearly a contentious one and, as such, demands the most careful examination and discussion at the hands of this Council. But the most appropriate occasion for that is obviously here and now, in this Session of the Imperial Legislative Council. The Bill involves principles of policy and government which are intimately bound up with the welfare of the State and with certain grave dangers to which that welfare has already been, and may again be, subjected. Surely it is beyond question that it is the duty of this Council to arrive at conclusions on those principles and on the details of the legislative action which they involve at the earliest possible opportunity.

"My Lord, I beg to oppose the motion."

12-53 P.M. **The Hon'ble Mr. G. S. Khaparde**:—"My Lord, I have got an amendment,

'that the Bill be republished in the 'Gazette of India' in English and in all the Provincial Gazettes in English and in the principal vernaculars of each province,'

against my name which is very much the same as that moved by my Hon'ble friend, except that I ask that the Bill be republished in the 'Gazette of India'

and in all the Provincial Gazettes in English and in the principal vernaculars of each province—an addition to which, I believe, my Hon'ble friend will not object, since his object it is to secure the fullest expression of public opinion. The reasons that have been given for this republication by the speakers that have gone before me, I stand by and I adopt. I wish to supplement their reasons with one or two others.

"It has been asked, and very pertinently asked, I believe, as to what is to be gained by a further discussion of this measure. It has been pointed that it will only increase agitation in the country, and it is very undesirable that this agitation should be prolonged or intensified. I do not deny that there is something in the argument; but I submit that this is exactly what we desire and which all law desires. Your Excellency knows that there is a presumption in law that everybody knows the law. As a matter of fact, I venture to think there are some points of law on which the most eminent practitioners are not agreed—I mean that jurists differ; and yet everybody is presumed to know the law and he is punished if he is found to have transgressed in any particular. Now this principle of law is recognised to be rather hard, and Judges have always said 'Ignorance of the law is no excuse; I shall punish you, but I will be lenient with you', and they let the offender off sometimes with a small fine, or in case of imprisonment, until the rising of the court, and so on. Now this principle of law did not matter so much in the ancient City States—like that of Rome. They were generally small States and all the citizens could gather together in one assembly or another, and the law was discussed and laid down, and the presumption arose that everybody who took part in the discussion of that law knew about it. And in those small City States probably they did know. But in modern times, when we live not in City States but in Empires, and large Empires over which the sun never sets, this presumption of everybody knowing the law is rather difficult to accept and difficult to understand. Along with the expansion of the States, expansion of the methods of publication has also gone on, and according as the law gets discussed, and more and more discussed, and even discussed in villages, so much the better for the law. Then everybody understands what the law is going to be and everybody knows, and any infraction of it can rightly and properly be punished. This by itself, I humbly submit, is a very good reason why the discussion should be prolonged.

"I have got another reason for it. The most intelligent people probably at first sight see the right point and arrive at the right conclusion. People of slower intelligence, like myself, take some time to think over it, and I believe a smaller portion of mankind generally like to sleep over the discussions and they like to take time to make up their minds, and it is better that the law should be under discussion for some length of time, so that everybody has in his own way and in his own manner thought it out for himself. That is not all, my Lord. There is a further advantage in publishing the law, and it is to my mind a very estimable one. That advantage is this, that when it gets discussed all over the towns and villages in all the rural places, I suppose these gentry against whom it is intended, they are somewhere about there I believe, they come to hear of this, and these revolutionary gentry or anarchical people they also possibly silently or perhaps actively whichever way it may be take part in these discussions, and the tendency of those discussions is that many of them would be converted to the right path by hearing reasons against it; that is to say this prolonged discussion is the formative stage of public opinion, and the longer it is carried on and the more vehemently it is carried on, the better, because the persons concerned, the persons intended to be brought under the operation of this law will have an opportunity, and an ample opportunity, of considering the pros and cons and in all probability such of them as have got any spirit of citizenship in them and such of them as are open to argument and are wavering or as it has been said such of them as are very young, they will all get the benefit of these discussions and probably change their ways, so that by the preliminary discussion we gain the end of this particular law. In those circumstances, I welcome this long discussion and prolonged discussion, and when a discussion becomes prolonged it generally decreases in intensity. Much has been said, nearly everything has been said, everything has been considered, and people do not want to listen to a person

who goes on reiterating what has been said before; the ingenuity of man is after all limited, and he cannot have any further argument; then the matter becomes a little stale and nobody listens to him, and ultimately people come to some reasonable opinion about it. When a new law of this kind is enacted, it is proper that the matter should be allowed to grow even stale for the matter of that, so that public feeling comes to a certain point, and public judgment arrives at a particular conclusion, and then the legislature can very easily embody that conclusion in the Bill or Act, as the case may be. There is a further thing in this particular law which I wish I had mentioned earlier; but even now it is worth mentioning. It is that this law, as I have been saying, really speaking, introduces no new principle; it introduces limitations to an old principle. The old principle is that nobody's liberty or property is to be taken away without the sentence of a Court. That is the law in England and everywhere else. But the contention of the framers of this Bill is that in the particular circumstances of India, those circumstances are so unhappy and so bad, that we are compelled to infringe upon this liberty, and to circumscribe, so to say, its application. That may be. I have disputed that myself both at Simla and here, and I maintain that no occasion has arisen for it; but conceding for the sake of argument that there is some occasion for circumscribing the wide application of this principle, I humbly submit that is all the more reason why we should discuss that principle and why we should discuss every limitation that is sought to be put upon it. That was one of the reasons which I wish I had said earlier. I will not say that I am right; but in the earlier stage of this discussion it is not the principle of the Bill at all, it is the circumscribing circumstances that have been introduced into the Bill that are to be discussed, and in this Bill, therefore, no question of principle arises. However, be that as it may, I humbly submit still further that one of the reasons for the publication of this Bill and the details of it is that all these details which go and which are intended to circumscribe the principle universally acknowledged, those details should be considered as minutely as possible and even considered more than it is necessary, so that it might become a part of the life of the people, and when they become a part of the life of the people they unconsciously get into the law and the law gets the support not only of the intellect of the nation but also of the heart of the nation, of the life of the nation, and the law really becomes easy to administer. These are my reasons for saying that this Bill should be published, not only in all the Provincial Gazettes, but also in all the principal vernacular languages, so that everybody may read or as in India many people do not read, everybody can get it read to him; he may hear about it; discussions may go on in his native language and in his native village, and in that way he becomes acquainted with all the circumstances. Also incidentally they would know why Government is framing this Bill and they would think about it. I do not say that they would all come to the same conclusions. If those conclusions are favourable to the Government, all the better. If they are not favourable to Government still better, because then they will come here and they will find expression through some of us here and Government will be in a position to discuss them and arrive at what I call a reasonable conclusion. So from all points of view, whichever way you look at it, it appears to me that further discussion and a little time given to the people to form their opinions would be very wise indeed in these particular circumstances.

"I have spoken practically on my own amendment which is nearly the same as that of my Hon'ble friend, Mr. Surendra Nath Banerjea, except that I wish to introduce the principal vernacular languages into it, to which I am sure he does not object or is not likely to object. I have spoken on this so that a vote may be taken on my amendment also without a further speech from me."

1-3 P.M. **The Hon'ble Rai Sita Nath Ray Bahadur** :—"My Lord, I beg to join my humble prayer to the united prayer of the whole body of non-official Indian Members of this Council requesting your Excellency to postpone the consideration of this Bill till September next. I strongly appeal to your Excellency, entreat and implore your Excellency with folded hands to

make this small concession to public opinion. If your Lordship does it, it will be considered not a sign of weakness but a mark of magnanimity,—a mark of grace I beg to repeat that you lose nothing, absolutely nothing, by postponing its consideration. Then why this insistence on a course of hurry which will give rise to fierce agitation in the country? I am a loyal subject of the Government, always ready to help in my own humble way any cause which goes to maintain law, order and good government. If I apprehended that a little delay would go to subvert law, order and peace, I would have been the last person to press for it. I beg to repeat here a trite Sanskrit saying—'Asuvasya kalaharanam'—that is, in a matter which will lead to disaster, delay is preferable. With these few words I beg to support the amendment of my Hon'ble friend, Mr. Banerjea."

The Hon'ble Rai Bahadur B. D. Shukul:—"My Lord, I rise to accord my wholehearted support to the motion moved by my Hon'ble friend, Mr. Banerjea. My Lord, you are aware of the bitter opposition to which the Bill has given rise in this country. It was expected that the Government would see their way to drop the Bill altogether. It was further expected that if that was not possible, Government would see their way to modify the Bill in such a manner as would be acceptable to this Council and to the country at large. But that was not to be. We counted without our host, and the result is, that the Bill as it has emerged out of the Select Committee still retains many of its objectionable features. There is no doubt that there have been material changes made in the Bill, yet there is a great dissatisfaction felt about the Bill, both inside and outside the Council. In a measure of vital importance like this, a measure which involves questions of life and death, and on which opinion is so sharply divided, it is in the fitness of things that the Bill as amended should be republished, so that the opinions of the public bodies and of High Courts as also of Local Governments should be obtained My Hon'ble friend from the Punjab, Mr. Fagan, seems to think that republication would only encourage 'literary discussion.' With all respect to my friend I do not agree with him. It will not only help literary discussion, but it will invite expert opinion of such bodies as High Courts My Lord, do the opinions of such bodies as the High Courts of Calcutta and Bombay count for nothing? I am sure your Lordship will not agree. I am quite sure the opinions we shall receive from such responsible bodies will help us greatly, and who knows the Bill after that may be so modified as to become acceptable to the country at large. Why should there be such a hurry when the whole thing is in the melting pot? The Bill affects the whole country and the whole of the Indian population, the majority of whom do not know English. It is therefore very necessary, as suggested by the Hon'ble Mr. Khaparde, that the Bill should be published in the principal languages of the provinces; it is also fitting that before any further action is taken the rural areas, from which I have the honour to come, should know what we are doing. They have a right to express their opinions on the subject and have their say. I do not think that your Lordship will be justified in legislating in regard to matters which so greatly affect them behind their backs. With these few words, my Lord, I support the motion of the Hon'ble Mr. Banerjea." 1-5 P.M.

[At this stage the Council adjourned for Lunch.]

The Hon'ble Mr. V. J. Patel:—"My Lord, after the decision of your Excellency to sit at 6 o'clock and thereafter, I do not think it is worth while taking up the time of this Council in supporting or opposing the motion of my Hon'ble friend, Mr. Surendra Nath. That decision, if it means anything at all, clearly and certainly means that so far as the official block in this Council is concerned they have made up their minds that the motion is going to be rejected, and the Council will begin considering the amendments at 6 o'clock. However, so far as my position on this amendment is concerned, I want to make it perfectly clear. I am one of those who believe that the only way to improve this Bill is to entirely drop it, and I do not think any amount of opinions received from the High Courts or the Local Governments or any 2-15 P.M.

political associations will make this Council a bit wiser. I am, however, prepared—the Council will be surprised to learn—to support the motion of my Hon'ble friend, Mr. Surendra Nath, and my reasons are only two. The first is, that it is human nature to see that the evil day is postponed, and I should certainly like to see that that day is postponed to September of this year or to any other further day. From that point of view I welcome the motion of my Hon'ble friend, Mr. Surendra Nath. My second reason is, that there is always a slip between the cup and the lip, and if this matter is now postponed it may be that time may bring wisdom, and the Government might see the unwisdom of passing this measure at any time. With these few remarks I cordially support the motion of my Hon'ble friend, Mr. Surendra Nath Banerjea."

2-10 P.M. **The Hon'ble Mr. T. Emerson** :—"My Lord, I rise to speak on this measure in the hope that the experiences of a Magistrate who has had much to do with the working of the rules under the Defence of India Act in Bengal may be of assistance to Hon'ble Members from other provinces in making up their minds as to the necessity for the Bill. It is not necessary for me to take up the time of the Council by enumerating the causes that led to the formation of a revolutionary party in Bengal, but it may help to bring the conditions of that province in 1915 and 1916 more vividly before the minds of Hon'ble Members, if I describe some typical cases which had to be dealt with by me as District Officer of Tipperah during those two years.

"The first case I propose to describe has already been mentioned in the speech of the Hon'ble Sir Verney Lovett on the occasion of the introduction of the present Bill. Early in 1915 Babu Sarat Kumar Bose, the Headmaster of the Comilla Zilla School, brought me a revolutionary leaflet which had been delivered in an envelope to a master in the school by two school boys. The boys . .

His Excellency the President :—"The Hon'ble Member will speak a little louder. It is very difficult to follow him, he will speak a little louder and slower."

The Hon'ble Mr. T. Emerson :—"The boys admitted the delivery of the envelope and said it had been given to them by a young man who said it contained a letter of invitation to some social function. An inquiry into the affair was held and no young man answering to the description given by the boys could be found. As it would have been unfair to assume that the explanation given by the boys was untrue they were re-instated in their places in the school from which they had been suspended pending the inquiry. The circumstances of the case, however, could not be kept secret, and the Headmaster's zeal being found inconvenient to the revolutionaries, he was shot dead in the public street at Comilla while it was still daylight on the 3rd March 1915 under such circumstances of brutality that one other man was killed and three injured by bullets. The occasion selected for the murder was the occasion of the matriculation examination; it was a time when schoolboys had come up for the examination from all over the district. The murder took place so close to my house that I was on the spot within half an hour of its commission. As president of the Zilla School I had had frequent occasions to consult with Babu Sarat Kumar Bose for whose character I had a high esteem. The Council will realise my feelings when he was struck down almost at my door and I was unable to defend him or punish his assassins.

"In another case which occurred in May 1916, the executive of the revolutionary conspiracy decided that a wealthy man of my district should be compelled, by threats of death to himself and his family, to pay a sum of money to the friends of the revolutionary cause. The notice to send the money was served through the registered post in a printed form, the blanks of which were filled up in manuscript, and it may interest the Council if I read the English translation of the notice as produced in the subsequent criminal case. This is a translation of the threatening letter in this Extortion case. 'You are hereby appointed (a paper-torn and in other copies later found with arms and ammunition on house search the word is 'contributor') in the Indian War.

To maintain your position, respectability, property and for the preservation of your life and specially as a security for the faithful discharge of our work (by you) in the new free State, you must deposit Rs. 7,000 by the month of Bhadra in the National Bank, otherwise fine and forfeiture of your life will inevitably follow. If you play the traitor, you shall be killed with your whole family.

1st Instalment Rs. 2,000 Date of depositing money between 8 and 9 P M., on Sunday the 1st Jaista.
Place—at the foot of a Banyan tree to the south of (paper-torn).
Sign.—A cartridge below a flag.
President.'

There is a postcript to the effect that the date of depositing the balance of Rs. 5,000 shall be communicated later on. The notice was followed up by a visit of agents of the revolutionaries armed with revolvers and after much negotiation it was arranged that the victim should bring the money to a place not far from the Comilla Railway station after nightfall and that two men should meet him on bicycles, receive the money, and escape by a train leaving at the time. The police obtained news of the intended extortion and intercepted the two men as they were escaping on bicycles. One of the men was arrested: the other jumped off his bicycle, ran off in the dark, and opened fire on the police. After a lively interchange of shots in the dark, he escaped: but the arrested man was brought straight to me with the revolver found on him. The man from whom the money had been extorted was also present at the inquiry which was held and his demeanour has left an indelible impression on my mind of the extent to which the revolutionaries succeed in terrorising their victims. I have learned that he died not long after the trial and it has been suggested that his death was hastened by the terrors that he has passed through, acting on a feeble constitution.

His Excellency the President:—"I do not wish to stand in the way of the Hon'ble Member, but I would draw his attention to the fact that the amendment we are discussing is to the following effect, 'that the Select Committee's report, together with the Bill and connected papers, be referred to Local Governments, High Courts and public bodies for criticisms.' Members, I hope, will confine themselves to discussing the amendment which is before the Council."

The Hon'ble Mr. T. Emerson:—"I was attempting your Excellency to prove how very urgent the matter is.

His Excellency the President:—"If the Hon'ble Member is leading up to that point, I am quite satisfied."

The Hon'ble Mr. T. Emerson:—"That is my object, your Excellency. By making these remarks, I was intending to describe the state that Bengal was in before we started to apply the Defence of India rules, and I had only one other example to give. After that I meant to describe the way in which they were dealt with under the Defence of India rules, and then to show the present state of affairs so as to show that this is indeed an urgent matter.

"The third crime that I was going to describe in order to show the necessity for the measures which subsequently had to be taken was the Lalitesher Dacoity, which took place in my district on the 11th September 1916. A number of young men armed with revolvers were committing a dacoity when they were obstructed by the villagers. In trying to escape with the loot, they shot dead five of the villagers, wounded five others and lost one of their own number killed. The dacoit who was killed was subsequently identified as a man who had been interned under the Defence of India rules and had absconded from domicile. In this case Government paid the debts of the villagers who had been killed and pensioned their families, and it was my privilege as Collector of the District to distribute these and other rewards locally. The unanimity of the whole country side in condemning the acts of the anarchists was evinced by the voices and presence of crowds who came to show their sympathy with the widows and children of the murdered men.

"This was the state of affairs in 1915 and 1916. I have described three typical cases, one each of murder, extortion and dacoity out of many that occurred, and I think I have said enough for Hon'ble Members to realize how difficult the situation was with which we had to deal.

"Cases of conspiracy and other criminal cases had been instituted, but although some persons had been punished, no impression had been made on revolutionary crime, while the murder or terrorization of witnesses and informers were making such prosecutions more difficult and less desirable. During the progress of these cases, however, a clearer knowledge was obtained of the character of the revolutionary movement, the members of which were found roughly to consist of three classes. The first class included the leaders—men so steeped in the doctrines of revolution as to be entirely irreconcileable—and those of their disciples who were so infected by the poison of their teaching as to be incurable.

"The second class consisted of those whose minds were poisoned but not so badly, that their cure was beyond hope. Besides these two classes there was a third class, mostly of students, and schoolboys who had a vague notion that by becoming revolutionaries they were joining a high and patriotic movement. The system of training young men in revolution and anarchy is described by one of themselves in a statement quoted in paragraph 104 of the Rowlatt Report to which I refer the Council. The majority of the members of the movement had been induced to join by working on their religious and patriotic emotions with insidious falsehoods, and it was this foundation of falsehood which made it impossible that the movement could retain good men once they knew its true meaning.

"Many such men, with the intention of putting an end to a movement which they believed would do no good either to their country or their religion, gave at great danger to themselves full information of the revolutionary conspiracy and of those who were engaged in it.

"By collating these statements and verifying them in every possible way, a knowledge of the exact state of affairs and of the names and degrees of guilt of the conspirators was obtained which could not have been obtained with similar accuracy in any other way, and we were placed in a position to act with certainty and effect when, in 1916, action was taken under the Rules made under the Defence of India Act. The first class of revolutionaries, those who in the interest of peace and of the suppression of the revolutionary movement could not be set at liberty—were proceeded against under the Regulation or interned in jail. A second class, it was hoped, separation from evil influences and an opportunity for meditation would cure—they were interned at a distance from their homes or in their own homes according to the degree in which they were implicated. The largest number of all belonged to the third class who were merely warned in the presence of their parents and guardians. I have warned many men and boys in the last class personally and solemnly in the presence of their parents and guardians, and am glad to say that in very few cases has it been necessary to proceed against them after the warning. On the other hand, in many cases the warning, I believe, led to the re-establishment of parental influence which had been weakened or lost by association with anarchists.

"As for the treatment of those who were confined in jail and detained in the mofussil, it is considerate and thoughtful. Those in jail under Regulation III are not associated with ordinary prisoners. They associate with one another and they play badminton, chess, *pasha* and other games and continue their studies, as far as is possible, by reading and writing. There are non-official visitors especially for them and the Magistrate himself visits them.

The Hon'ble Mr. V. J. Patel :—"I rise to a point of order, your Excellency. The question is not the necessity for the Bill but the urgency of the measure. That is the only question before the Council, and your Excellency ruled that Members should confine themselves to the consideration of the amendment only."

His Excellency the President :—"I think the Hon'ble Member has been straying from the amendment during the last two or three

seconds. I hope the Hon'ble Member will confine himself to the amendment."

The Hon'ble Mr. T. Emerson:—"The revolutionary movement is not yet dead. There are still in custody or in detention men whose release would mean the breaking out again of the old trouble, and there is recruiting going on still of young men who are to be ready when the Defence of India Rules are no longer in force. If, however, the Council shows by the passing of this measure into law that its face is set against anarchy and revolution, I am convinced that the movement will quickly die a natural death. This is the reason for the urgency of the measure. If the measure is now postponed, if it is not passed into law, if the Hon'ble Member's amendment is accepted, and the Council shows that there is the least weakening in dealing with this anarchical and revolutionary crime, then I think that it will act as an encouragement to these people who are still working in order to carry on the movement."

The Hon'ble Sir Fazulbhoy Currimbhoy:—"I am not at all convinced by the arguments which were brought forward by my friend the Hon'ble Mr. Emerson. The Defence of India Act is going to remain in force till the peace is signed and six months after. My friend, the Hon'ble Mr. Banerjea, when he moved this amendment, clearly pointed out that peace will be signed much later than September. So, if this Bill is postponed until September and the views of the people of the country, of the High Court and other bodies are obtained, nothing will be lost. I think the Hon'ble Mr. Emerson is under the misapprehension that the Defence of India Act is going to be cancelled and that this Bill is going to be brought into force immediately. 2-34 P.M.

"I have no other arguments to put forward, because, after the eloquent speeches of the Hon'ble Mr. Banerjea and many of the previous speakers, I do not wish to take up the time of the Council. I sincerely support the amendment moved by my friend the Hon'ble Mr. Banerjea."

The Hon'ble Sardar Sunder Singh Majithia:—"My Lord, unfortunately for myself, I was not present on the first occasion when this Bill was being discussed. The measure is a very important one. It brings into being a machinery for disposing of certain crimes in a speedy way and in a somewhat different method from what is in the present law of the country. I have since read the debate with very great interest, and sometimes have been swayed one way and sometimes other by the eloquent speeches of the Hon'ble the Law Member on the one side and the non-official element of this Council who belong to the legal profession on the other. To a layman like myself the reading has been a very interesting study. But, my Lord, though I am willing to do all that lies in my power to meet the requirements of an urgent situation, but I am not convinced of the hurry with which the measure is proposed to be dealt with, infringing as it does with some of the vested rights of citizens of the Empire, I am aware that the provisions of the Bill are meant for those who have anarchical tendencies, but you have, my Lord, to consider the vast majority of innocent people and you cannot help considering that it is the subordinate police who will have to take the first step in the matter. We know that many a good measure has been made impossible by the underlings who have to deal with the public at large. I am quite prepared to give due praise to the police where they deserve, but this does not take away from the fact that the whole of the police force is free from any taint. So, I fear that in the working of this measure the police will get unlimited scope for their activities, and there is a very great danger of the innocent suffering with the wicked who could have no sympathy from the law-abiding citizens of the Empire. We have besides to consider that the measure introduces certain innovations into the law of the country which have been so well put forward by my legal non-official colleagues of this Council. 2-35 P.M.

"My province has had some kind attentions from the votaries of this reprehensible cult, but not finding a suitable ground they had to import a certain section from outside the Punjab, who for some valid grievances were easily misled into actions which were against their well-known traditions. But, my Lord, the

section of the law-abiding community in my province did not give them any support and the country as a whole has helped the authorities to put down the activities of the revolutionaries and the behaviour of the people is a proof positive of what the co-operation of the people can do in this matter.

"My friend, the Hon'ble Mr. Fagan, has said what good would it serve if the Bill were circulated for public opinion when the *élite* of the country are represented in this Council? But may I ask my Hon'ble friend if he would give consideration and due weight to the opinions of the *élite* of the people as represented and expressed in this Council? He again said what is to be gained by procrastination and delay? Well, the old proverb says, 'When you have no one to consult, consult the wall'. Delay causes no harm and we may elicit opinion which may be useful. So I would strongly urge the acceptance of the amendment proposed by my Hon'ble friend Mr. Banerjea."

2-40 P.M. **The Hon'ble Rao Bahadur B. N. Sarma:**—My Lord, I should be inclined to vote against the amendment suggested by my Hon'ble friend, Mr. Banerjea, on one condition. I do not know that I would be right in doing so even on that condition, but it is a consideration worthwhile stating. The Hon'ble Mr. Fagan has told us that every one of these amendments that is put on the agenda will be discussed, and may be discussed in the open Council, and that the remarkable ingenuity that is displayed in the framing of these amendments shows the ability and the grasp of the subject of the Hon'ble the non-official Members and, consequently, that the measure cannot suffer by the non-postponement of the consideration of this question.

"We are deeply thankful to the Hon'ble Mr. Fagan for the compliment he has paid the non-official Members of this Council. If the Government would allow the official Members of this Council to vote as they please, according to their consciences, according to their convictions, then I for one would be prepared to ask that the Council should reject or may reject this proposition of the Hon'ble Mr. Banerjea. In that case each question, each proposition, each amendment would be discussed on its merits by the whole Council, and there might be a chance of modification in the principal provisions of this measure. But our past experience, my Lord, the experience of most of us who have been connected with the Councils, confirms the painful fact that if non-official Members can influence the Government at all, it is only in the Select Committee stage or before a Bill is presented to the Council, and that it is nearly impossible to convince the Government once they have made up their minds in the Select Committee to follow a certain procedure to change their line of action by any arguments that may be advanced in the Council. I quite appreciate that here and there in minor points there may be a little give and take; but in substantial questions which matter, I think, it is the experience of all that there is absolutely no hope or chance of amendment. It is therefore in the hope that the Government themselves, having regard to the constitution of the Council, might reconsider the provisions of the Bill—it may be all the provisions of the Bill—or at any rate those to which the strongest exception has been taken. It is in the hope that the Government will reconsider the Bill in the light of any remarks or suggestions that may come from Local Governments, from official bodies or the Hon'ble Judges of the High Courts, that most of us are here struggling to induce the Government to accept this amendment. It is not an impossible thing to conceive that the Government, if they should be so advised by their Local Governments, by their own officials and their own Judges and by any such bodies as they might have confidence in might change their views with regard to the scope and character of the more important provisions of this Bill. It is for that that we ask for an adjournment: not that a few months would be of such considerable use as that we should waste the time of the Council in pressing this amendment. It is really all the same whether we pass the Bill now or in September. It is because we think there may be some chance of the Government reconsidering their decision that we press this amendment. So much has been said already as to nothing being lost if a little time is given, that I cannot add usefully to those remarks It has been said that a Committee has gone into the whole

question and that the Government are only carrying out the provisions recommended by that Committee. We quite appreciate that. It is just possible that after listening to the advice of their own officials the Government will come to practically the same conclusion. There is a possibility of that. But I submit, my Lord, that every opportunity should be given when such drastic provisions are going to be placed on the Statute-book; every opportunity should be given to the officers of the Government and to His Majesty's Judges to say as to whether the machinery at their disposal has failed; if it has failed, in what respects it has failed, and how it should be modified or rectified. His Excellency has ruled that the amendments suggested to the Select Committee's report by the Hon'ble Pandit Malaviya, Mr. Patel and Mr. Khaparde, are out of order, and I am bound implicitly to obey that ruling; but having regard to the one exception that was made previously, it is just possible that the Government might communicate those amendments also to the Local Governments and others and to the public at large with a view to eliciting any suggestions that might be made with reference to the suggestions of those Hon'ble Members. I only throw it out as a possibility, not that I have much hope of its being accepted. But I still submit that it would strengthen the hold of the Government on the public if a little concession of that character were made without standing too strictly by technical rules.

"With these few words, my Lord, I hope the Hon'ble Mr. Banerjea's amendment will be accepted by the Council."

The Hon'ble Mr. W. A. Ironside:—"My Lord, the opportunities that I have of taking further part in public life are, I feel, drawing swiftly to an end, and I may tell some of my Hon'ble colleagues that I shall depart from political life disappointed and very discouraged. When I first took a hand in the work of this Council I came here full of sympathy, full of desire to do my part as a friend of the country, ready to be convinced by any opposition to my own views. I have listened to-day to a great deal of eloquence, but I cannot help feeling that all of my Hon'ble friends have failed to use a single argument which has carried with it to me any conviction, and until I am convinced I cannot support an amendment such as has been proposed by the Hon'ble Mr. Banerjea. I do not think that any one has questioned the position that has been taken up by the Members of Government in regard to this measure. I have gone into it very closely. I have listened to all the speeches for and against, and I feel that Government have acted throughout with care, with sincerity and with generosity. One of the special pleadings that have been put forward is that more generosity is still needed. Now, as far as I have seen in my dealings with this country, up to a point generosity and justice is necessary; but beyond that point generosity and justice are a suggestion of weakness, which is taken hold of and only carries weight and strength to the movement against a generous Government. Now, my friend the Hon'ble Mr. Banerjea has told us that this Bill affects but a very small and unimportant section of the community. I agree, and consequently I, for the life of me, cannot understand this extraordinary concern for a small and unimportant section of the community, whilst the greater and saner section of the community, which the Hon'ble Mr. Banerjea represents, should not be considered by the provisions of this Bill. That is one of the reasons why I for one cannot understand the logic of some of his proposals. 2-48 P.M.

"It has been suggested that this Bill should be referred to the High Courts. Now I may be wrong, I may not know anything of politics, but I have always been under the impression that the High Courts read the law as it emanates from this Council.

"Is this Council not to form the law, or make the laws of the land, or is the High Court to do so? If the High Court is to tell us what we are to do, then what is the use of this Council? I cannot see why we shall be any better off next September after we have heard the views of the High Court than we are to-day, if we are to be the body to make the laws of the country.

We have been told that time is a pacifier. Well, it is sometimes. I do not know that it is so in all cases. From my experience of this country I have not any great faith in that idea of Mr. Banerjea.

"The danger to the reform scheme has been brought forward with reference to this Bill. We are told that the Government have brought forward this Bill in order to endanger the reform scheme. It has been suggested .

The Hon'ble Mr. Surendra Nath Banerjea :—" Not by me."

The Hon'ble Mr. W. A. Ironside :—" I did not say by the Hon'ble Member. It has been suggested that this Bill is a hidden wicked provision of Government to endanger the future of the reform scheme. Now, my Lord, with all the faults of the Government of India, I refuse to believe that there is one man in the service of the Government of India who would so endanger the good name of Britain, who would so endanger the name of the service to which he belongs, to think of such an idea as that. Personally I think that if this Bill had gone through, it would have gone a long way to assist the reform scheme and that the danger now lies if the people of Great Britain and the opponents of the reform scheme get to hear of this agitation in India and of the opposition in this Council on the premises put forward by my Hon'ble friend and colleague.

" Coming to the question of public opinion, I have just come back from Calcutta, and I had an opportunity there of discussing this proposal with several Indian friends, friends for whom I have got the greatest respect, whom I am prepared to meet on equal terms anywhere, and although I was very much impressed prior to my visit to Calcutta with the eloquence of some of the gentlemen in this Council, I was appealed to, to oppose the suggestion, and to help this Bill to go through for the sake of the people of Bengal, and for the sake of that saner community, the saner proportion of the community for which my friend, Mr. Banerjea, speaks. My Lord, the question is one of conviction. Are we in favour of anarchy or are we not ? If we are convinced that this Bill deals with anarchy and wickedness, and anarchy and wickedness only, then there can be no opposition to the Bill which has any convincing proof behind it."

2-57 P.M. **The Hon'ble Mr. M. A. Jinnah :**—" My Lord, I had no intention of taking part in the debate on this motion, because I understood clearly from what fell from your Lordship that the Government had made up their minds not to accept the motion of my Hon'ble friend, Mr. Banerjea. But the only hope that I have still left is that I may be able to convince Mr. Ironside, if he is, as he says, open to conviction ; although I recognise that it is a very difficult task having regard to the manner and tone of his speech. However, I will make an effort. My Lord, Mr. Ironside says first of all ' Why do you want to postpone this thing ? ' Now, I will try and explain to him the object of the postponement. To begin with, this Bill is brought into this Council by an executive Government, an executive Government that has got no mandate from the people at all. The executive Government means the Governor General in Council. They have decided to undertake this legislation upon the recommendations of the Rowlatt Committee. That executive Government consists of a small number, and I have my doubts, my Lord, as to at least some members of that executive Government as to what they think of this piece of legislation. I also have, my Lord, my serious doubts and I cannot believe that men of the type of the Hon'ble the Law Member, men like Sir C. Sankaran Nair could possibly have in their heart of hearts really liked this measure or given their sanction. Even, my Lord, as regards Sir George Barnes, a member of the bar, I say I have my doubts. What do you then find ? You find that the Executive Council have determined to bring these Bills before us. This Executive Council with an official block behind, who are not given any discretion in this Council to vote according to their own conscience or take part in this debate according to their own judgments :

The official majority are under order to vote for the Bill. We were told by the Hon'ble the Law Member that the Government of India (which means the Executive) had considered this matter, and that they were not going to surrender their judgment. Now, my Lord, it is for that very reason and because this Council, this Legislative Assembly is so peculiarly constituted that in all its wisdom it has invariably obtained previously even in trumpery matters the opinions of Local Governments, High Courts and all public bodies, otherwise there is no check or means of stopping the executive in its determination. I am not here to doubt the sincerity of the Government. I do not for a moment doubt that their conviction is based on grounds which appeal to them. That is not the point. Nobody has suggested that the Government have acted with sinister motives; nobody says that the Government is not convinced. But you forget that the Government, as it is constituted, has no check on it of any kind whatsoever. You find that the executive, or the Governor General in Council, have decided that these Bills must go through. You find in this Legislature an official majority at their back who are under orders to vote for the Bill and you find every non-official Member opposed to it. Now, how is the issue to be decided? Are we wrong or are you wrong? That is the question. Have we gone mad? There is not a single non-official Member in favour of the Bill. My Lord, this is a serious situation. I appeal to the Hon'ble Mr. Ironside, are we wrong under these circumstances to say 'please stay your hand.' Let us get outside this Chamber. In this Council-chamber the atmosphere is surcharged with two elements, you are determined to carry the Bills through; we, on the other hand, are determined to oppose the Bills to the last. Now, my Lord, I appeal to any reasonable man, is the situation not serious? Should it not be solved? We say get the opinions of Local Governments, get the opinions of High Court Judges, get the opinions of public bodies. If Mr. Ironside is right that Indian gentlemen with whom he is prepared to stand on equal terms anywhere told him that they want this Bill in Bengal for the safety of the saner section, well, let us have their opinions. Surely, if responsible people in Bengal have come to that conclusion, would not your hands be strengthened. I see the Hon'ble the Law Member shakes his head. My Lord, I have so much respect for him that I can never say anything against him, that is not possible, but I will say this, my Lord, that he is still a mere advocate and when once he advocates a cause he is nothing but an advocate. My Lord, I am surprised at his attitude, but this is rather going away from the merits of the motion, but I am really surprised that the Hon'ble Mr. Ironside, an Englishman, I believe I am right, but he may be a Scotchman, anyhow he is a Britisher, should say that there is a small section, admittedly a bad lot, a wicked lot, that this Bill is intended to deal with them. And why is this bigger section, this saner section so much excited over it? All I can say to Mr. Ironside is, please peruse your own history, your people in England have fought for this since the time of King John and they have shed their blood in order to maintain this principle that no man's liberty is to be taken away without a trial. It is not the wicked we want to protect, it is not them that we want to see escape being brought to trial; it is the innocent we want to save. Can you imagine what the passing of these laws means. No Englishman could stand here and allow, if it was his own country, a law of this character to be passed and say 'what does it matter, because there is a small gang of men who are committing political crimes, I shall accept these laws.' What did you do in England? I am astonished that Mr. Ironside does not know his own history. Even under the Defence of the Realm Act in England at the time of this great war, no British subject could be interned for more than six days without a trial unless he was of hostile origin or associations. We gave you power here to intern a British subject in this country without a trial under the Defence of India Act. What do you find in England? I would ask Mr. Ironside to read a judgment, if he wants to do so, delivered in 1917 by Lord Shaw.

"A German, but naturalized British subject, was interned for 18 months; members of the English Bar and some of the Judges subscribed to his defence fund in order that his case should be taken to the House of

Lords. I have been brought up in your own school, Englishmen have been my masters and I think that this measure before the Council involves an upheaval of constitutional rights. If you say 'we are the Executive, we have a majority, and we are determined to carry this Bill through, no matter what you say, no matter what you think'; if you say that you are determined I have nothing more to say but that the consequences will be most unfortunate. What are you going to gain by this? I fail to understand. But we have come to a crisis, an *impasse*, and I ask what is going to be lost by postponing this Bill till September. I entirely associate myself with the remarks of the Hon'ble Mr. Banerjea. In regard to the reform proposals my expectations are not those of other people, they are not extreme expectations, but I believe that they will go a great way to clear the atmosphere. My Lord, it was said that it will make agitation worse. There again I am not going to be a prophet. But how is that possible? Why do you say that agitation will be worse than what it is at the present moment? I say the agitation is at its height at the present moment. I have to-day received a telegram from the non-official members of the Bombay Legislative Council. The Hon'ble the Law Member says 'Oh, agitation will be what the politicians choose to make it.' I can tell the Hon'ble the Law Member that if he had any experience of the public life of my country I am sure he would never have said that. 'Agitation will be what the politicians choose to make it!' All I can say is that this is a great mistake. The non-official members of Bombay have sent me the following telegram and it is signed by Mr. Gokhal Das Parekh, the mildest of the mild men, and on this point I am sure the Hon'ble Sir Dinshaw Wacha will bear me out. This is the telegram: 'The Association of non-official members of the Bombay Legislative Council unanimously resolved at their meeting to-day to request you to express their emphatic protest against the Rowlatt Bills; please read this telegram to the Council.' By your meeting this very simple request your position is not in the least prejudiced. If Government in deference to public opinion stay their hands at least for a short time, what will be lost?

"Then, my Lord, another argument which was advanced by my friend Mr. Ironside, and I believe that is an argument which appeals also to some of the officials; it is that if you make any concession to public opinion, it will at once be taken as a sign of weakness. Such a monstrous argument was never advanced before in this Council. Does Mr. Ironside think, my Lord, that we here in the Council and a large body of men outside this Council are so stupid as to think that because the Government have in the clearest possible case met public opinion and made a concession, that the public would construe it as nothing but weakness on the part of Government? In that case, the safest rule, my Lord, is that, the moment Government once come to a decision, however wrong it may be, however flagrantly wrong it may be, the Government must stick to it, because you have come to a decision. The public may oppose but it is your duty to say 'we are not going to be called weak. No matter how hopelessly wrong we may be'. Is that weakness? I say it is not weakness. It is injustice, but to do the other it is strength. You are not in a position to gag the mouth of every individual when there are 300 and odd millions of inhabitants in this country; there may be a man here and there, there may be a little bit of a rag that may talk in this fashion that the Government had to give in, the Government had to bend and all that. But, my Lord, would you hear such a sentiment from any responsible man? We know perfectly well, every Indian who has got any sense in him knows perfectly well, that you are all-powerful, you have got the power, you have got the strength, you have got the force behind you, and you can put into force any law you like. Any man who has the slightest intelligence understands that. Well, then, what is the good of bringing this argument? My Lord, it is an argument which is put forward with a view to really stiffen the back of the Government. Those, my Lord, who want the Government to persist in the wrong course always like to bring forward this argument in order to stiffen the back of the Government, because they do not want the Government to come to right conclusions. That is all that I can say about this line of argument.

"Well, my Lord, coming to the third point raised by the Hon'ble Member from the Punjab, the Hon'ble Mr. Fagan, he said 'Oh, well, we have got here all the talents, all the abilities of both officials and non-officials, although officials here are not allowed to exercise their judgment nor are they allowed to vote as they like, not even Mr. Fagan is allowed to vote as he likes, but he says we are all here, we have got the orders to vote and we have got to vote. Well, if that is going to be the principle, my Lord, and the Hon'ble Mr. Ironside also asked who is going to legislate, we or the High Court Judges, and observed that we are the Government, and we have to legislate. Mr. Fagan says 'we have got all the talents here, what more do you want.' But, my Lord, may I ask a simple question that if that is so, why is it that any Bill is ever allowed to be published at all; why is ever any Bill sent for opinions to Local Governments, to the High Courts and to the public bodies, why is it ever done, I repeat? We are to legislate, we have got all the talents here, what more do we want. No, my Lord, the object of this is that we want outside opinion, opinions from different parts of the country, opinions from men who are both in close touch with the actual administration of the country and also of the public life of the country. That is the object, and it is a very wise and a very salutary practice; we must not arrogate to ourselves that we alone here have the concentrated wisdom centered in Delhi or in this hall. Therefore, my Lord, I submit with the utmost respect that the Rowlatt Committee's recommendations are *ex parte*. The decision of the Executive Government has been arrived at without due consideration of the matter. I do not doubt for a single moment the convictions of the Government or at least of some of its members; I do not doubt the sincerity of the Government. But I say, my Lord, and I do beg of the Government to take note of this: Do you doubt our sincerity of opposition? Do you doubt our convictions? Do you think that we are opposing for the sake of opposing? Do you think that we are putting these difficulties in your way unnecessarily? Do you think that you have the welfare of my country at your heart and that I have not? Do you think that I want revolutions while you do not want them? Do you think that I want disorder and you do not want it? Is there a man in this room amongst us whom you can point out and say that there is one man here who would like to see the welfare of my country being sacrificed? But, my Lord, why is this position taken up by us? And I do ask you, and I do appeal to you, to pause, my Lord, I had got up merely for the sake of convincing Mr. Ironside, and I do ask Mr. Ironside, were he an Indian standing in my position and if he understood this measure, and its effects, if he had been brought up in the traditions of Great Britain, as I am, would he not feel what I am feeling and say what I am saying? I am sure he would."

The Hon'ble Sir William Vincent:—"My Lord, of the many amendments that have been proposed with which I shall have to deal in this debate, this is perhaps the most important, and it derives, if I may say so, additional weight from the character of the Hon'ble the mover and from the support that it has received in this Council. It is to my mind a matter of great regret—and I speak here with all sincerity—that the Government are unable to accept it. I regret this the more because of the support that this amendment has received from a number of Members who are often able to co-operate with Government. There are other Members whose co-operation and support I have less reason to hope for. 3-19 P.M.

"My Lord, the question of the urgency of this legislation, and that is the only question that is before us, was debated at great length when the Bill was introduced and referred to Select Committee; substantially the same questions which have been agitated to-day were then discussed very fully, and I should like to know what has happened since then which can lead this Council to reverse the decision then arrived at, namely, that the consideration of the Bill should not be deferred. Can it be said that it has been materially changed in Select Committee or made more drastic? The Hon'ble Mr. Chanda put forward in this connection two arguments. In the first place, he said that even if the

modifications are in the direction of making the Bill less drastic, still this was a material change, and for that reason it is desirable that it should be referred for public opinion. If the Hon'ble Member had been one of those who thought that we had gone too far in the way of mitigating the rigours of the Bill, I could have understood him, or if Mr. Ironside or some other Member had said you have made a mistake in making this Bill applicable for three years only; if you publish it in the country you will find the public wish it made a permanent measure, I could have appreciated the objection; but I do not understand that to be the point of view which Mr. Chanda takes up at all. The only other reason which he gave for suggesting republication was that the Bill had been made more drastic and was an amendment of clause 20. I think it will be time enough for me to deal with that matter when the specific amendment relating to the clause comes up for discussion; but no Member of this Council can, I think, suggest that, taking it all in all, this Bill has not been made less drastic than before, and it was in this direction that the Government consistently throughout the Select Committee attempted to meet Hon'ble Members. They were, as I said at first, anxious to make any modifications they could in it without rendering the Bill ineffective for the purpose for which it was framed. I submit, therefore, that there are no reasons which exist now for republishing this Bill which did not exist at the date of first hearing.

"I have listened very carefully to the various arguments that have been put forward for republication and I tried to collect them as best I could. The first suggestion was that public feeling was much agitated over the Bill, and that there was a prospect of passive resistance. My Lord, I do not wish to deal with this question of passive resistance at present. I can only say that I am very glad to see that many Members of this Council have rejected the idea and done their best to discourage it. I will add that it must be a matter of regret to all of us that a man of Mr. Ghandi's character should have lent his support to it, but I do not think that any Member of this Council will suggest for a moment that the attitude of the Government of India in regard to legislation, which is of urgency and importance, should be affected by a threat of this character. Mr. Banerjea then took a somewhat different line. He said if you postpone this Bill till September, the agitation will diminish and become less forcible. My Lord, I wish I could believe that that would be so. Dr. Sapru did not indeed support this opinion, and if I may say so, I think his is the more correct view. The more Government yields in this matter, the greater force would the agitation obtain. I would not of course make that a reason for refusing to postpone the Bill if I thought the postponement were otherwise desirable, but the suggestion that the agitation will decrease if the consideration of the Bill is deferred is an argument that I could not accept. Another argument addressed to Council was—'you have consented to republish the other Bill and so you ought reasonably to take the same course with this one.' I think I have got the argument correctly. The answer is very simple and very short. The other Bill was of an entirely different character. It was a permanent piece of legislation and not an Emergency Act. When the question of postponing further consideration of that Bill was under discussion, the argument was all the other way. It was then said that that Bill differed entirely in character from the Emergency Powers Bill, and therefore you can have no objection to republishing it. When we accept that view and republish the smaller Bill we are told: 'oh, you have republished one Bill, you ought, therefore, to republish the other,' although the two Bills stand on an entirely different footing. There is no force in this argument.

"Another argument suggested is that the passing of this Bill and the failure to republish it may prejudice reforms. I think I need say nothing more on that subject: it has so frequently been explained on the Government side that we do not believe that the action which we are taking can in any way prejudice reform. We believe, on the other hand, that failure to deal with this revolutionary movement will be far more likely to impair the chances of political progress in this country than anything else. We may be wrong, we may be right, but that is the view which many of us hold.

"The next suggestion that I heard was, that as the revolutionary movement is now dead, you really need take no action. My Lord, on the last date when this Bill was debated I did my best to explain to the Council what the actual position was. For the time being this evil has been checked temporarily under the powers vested in Government under the Defence of India Act, but we know that the conspiracies exist and that the leaders are only waiting to renew their activities, and that they are only checked by the fact that they know of the powers exercisable under the Defence of India Act. If those powers were removed, I venture to prophesy that there would be a violent recrudescence of the movement, and such disheartening and discouragement of our officers that results of a disastrous character to the peace and good government of the country would certainly ensue. The movement, my Lord, is not dead. I wish it were. If that were the case the Government would not have introduced this legislation, nor would the measure have that urgent character which it now possesses. At the last meeting I read out an extract from Sir Henry Wheeler's speech in the Bengal Council on this subject, and I also read out other extracts to which I do not wish to refer again, which illustrated what the intentions of these anarchists are.

"The only other point to which I need refer—and it is a matter of great importance—is that it is said we have failed to consult Local Governments or ascertain what public opinion in regard to these measures are. My Lord, we have really had this question under examination for a very long time. We had been discussing it for years before the war began, and if it had not been that the accident of the war necessitated the passing of the Defence of India Act, we should have had to undertake special legislation to deal with this kind of crime very much earlier. It is not accurate to suggest that we have not consulted Local Governments and others on this subject fully and very comprehensively. As a matter of fact the recommendations of the Rowlatt Committee's Report were circulated to Local Governments, and we have either had written opinions from them or consulted leading officers sent up by the Local Governments to discuss the question with us. The decision we have made has not been reached by the wisdom of the Government of India alone, but after very careful discussion with numerous authorities. As for public bodies, may I draw the attention of the Council to the fact that the Rowlatt Report has now been published in India for about eight months and every public body, indeed many individuals, have had ample opportunities of saying anything that they liked about it. Nor has there been any lack of criticism by public bodies on the Bills now before the Council.

"I have received a considerable number of such criticisms myself. It cannot therefore be said that the necessity for this legislation and the details of it have not been examined and ventilated very thoroughly. It is true that we have not got the opinions of the High Courts, but, on the other hand, we have the opinions of a number of judicial officers and the Committee, which was originally constituted to consider this question and of whose recommendations this Bill is the result, consisted entirely, save for one officer, of either professional lawyers or judicial officers. This is not a Bill hatched in the innermost recesses of the Secretariat. It is not a Bill concocted by some bureaucratic Civilian; it is a Bill that emanates from the recommendations of a Committee composed of three Judges, one Indian lawyer and, I think, one executive officer. It cannot be said, therefore, that judicial opinion on this measure has not been taken. Further, if we did refer a Bill of this character—certainly the preventive Parts II, III and IV—to the various High Courts including the Calcutta High Court for opinion, judging by past experience, the chances are that the reply would be that the Judges were not concerned with executive acts of this character and therefore that they would not give us any opinion. The Hon'ble Member* shakes his head, but I have had some experience of these matters.

"I have now attempted to deal with the arguments which have been raised in favour of republication, but I want very shortly, even at the risk of repeating some of the arguments which I put forward in the opening

* The Hon'ble Mr. Banerjea.

debate, to explain why the Government of India think it necessary to push on with this legislation. They do not do so with a light heart. They appreciate the difficulties of the position; they appreciate also the undesirability of moving in opposition to the views of many whose support they always seek to secure. The position is this, that peace may be declared at any moment. The Hon'ble Member would postpone the date to some time in June or July; we think that the date may be earlier. After that, the Government wishes to be in a position in which it will not have to use for the preservation of the public peace measures intended for the war more than is strictly necessary. They have already been accused unjustly, as they think—possibly Hon'ble Members have a different opinion—of using unfairly emergency measures intended for the war, for purposes for which those laws were not enacted. The force of that accusation would be redoubled if, after the conclusion of peace, the powers conferred upon Government by the Defence of India Rules were used unnecessarily. Moreover, the Government cannot risk the possibility of a gap between the date on which the Defence of India Act ceases to be in force and the new legislation comes into operation. We were told, I think by Mr. Chanda to-day, that we could meet the difficulty by an Ordinance. The Hon'ble Member—if I may pause for a minute here—went on to say that Acts of this Legislative Council were much of the same nature as Ordinances, in that the executive always carried its own way. May I point out that that is scarcely fair or generous to us. The difference is this. An Ordinance is made by an act of His Excellency without consulting public opinion at all; legislation is passed in this Council after hearing what everybody has to say, and I do think that Hon'ble Members of this Council ought to give us at least the credit of having materially modified this Bill to meet their wishes and having gone as far as we thought possible to meet them in this matter. To suggest, therefore, that legislation in this Council is of the same nature as an Ordinance is, I think, as I said before, a little ungenerous to the Government.

"To return to the question of providing what is required by an Ordinance, I would ask the Council to consider very dispassionately whether they would have supported the Government if we had asked His Excellency to make an Ordinance of this kind. We should have been told that the Rowlatt Committee's Report had been out a year, that no attempt had been made to legislate in the Council although every opportunity had occurred for doing so, that Hon'ble Members had not been allowed to examine the proposed legislation and that their opinion had been deliberately flouted. Lastly, it would have been added that the Government had abused the power created for an emergency after the emergency had passed. The suggestion is that we might extend the Defence of India Act by an Ordinance. My Lord, when that Act was passed, Sir Reginald Craddock gave a distinct undertaking that it would only be in force during the war, and if we had asked His Excellency to extend the period by an Ordinance, I think we might also have been very well accused of a breach of faith. I do not think seriously that any one can say that the Ordinance method of legislation could have been adopted in the circumstances.

"I want, however, to use this argument rather for a different purpose. Hon'ble Members say 'Use the Defence of India Act; prolong its life by an Ordinance; do anything you like; take these powers; use them, but do not ask us to support you.' My Lord, is not that an admission that there is a necessity for legislation? Is it not an admission that the dangers to be apprehended from this revolutionary movement are very real, and that preventive measures are urgently necessary? Further than that, does not it really constitute an admission that the very kind of measures which we are now asking this Council to support us in taking are a reasonable and effective means of preventing this evil?

The Hon'ble Mr. Kamini Kumar Chanda:—"What I said was that, assuming that there was any need for this legislation, do it by Ordinance. You can do that."

The Hon'ble Sir William Vincent:—"The Hon'ble Member, I think, has forgotten that he is not the only Member of Council. This suggestion has been made both on the last debate and now by several Hon'ble Members—at least that is my recollection.

The Hon'ble Mr. M. A. Jinnah:—"I rise to a point of order. If the Hon'ble Member wishes to refer to a particular Member, I think his name ought to be mentioned. I do not think it is fair to make a general statement like this, and when one member gets up and contradicts it, then it is said it was somebody else."

The Hon'ble Sir William Vincent:—"I remember the names of the Hon'ble Members perfectly well, and I think the Hon'ble Member knows them too If he denies that the statement was made that the Defence of India Act should be prolonged by Ordinance, I shall be glad to name the Member who recommended it, and my suggestion is that any one who puts forward the proposal that we should prolong the life of the Defence of India Act, that we should enact preventive legislation by Ordinance is really asking us to do by an executive act what he reprobates as a legislative measure. I maintain myself that the course taken by the Government in this matter is more open and more honest. We say very definitely that we require these powers urgently to enable us to discharge our responsibilities to His Majesty for the preservation of the public peace. We believe that the maintenance of order is essential in the interests of political progress which we fear might be irretrievably endangered by any outbreak of revolutionary crime, and we come to this Council and we ask them openly for their support in this matter. We are strongly of opinion that no useful purpose would be served by republishing the Bill at this stage. Indeed, we think that any such republication would merely promote in the minds of the public an element of uncertainty as to the intentions of Government in a matter upon which their views are perfectly clear. It could therefore only encourage and promote further agitation.

"We have made every endeavour that we can to meet reasonable opinion; we have explained the reason for this legislation; we have restricted its scope to the narrowest limits; and we must now proceed with it and cannot allow ourselves to be prevented from doing so by any threats of agitation.

"My Lord, I have very nearly done. I only wish to add that we are not pressing this measure through Council during the present Session out of any sense of opposition or out of any desire to flout the Members of this Council. We honestly believe that the measure is urgently needed, and that unless it is passed some parts of this country will be plunged into the disorder which prevailed only a very few years ago; and it is for that reason that I regret—and as I said at the opening of my speech I use the word in all sincerity —I greatly regret that I must oppose this motion for republication."

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, the Hon'ble the Home Member asked what has happened since the time the Bill was first taken up in this Council to modify the decision then arrived at not to postpone the Bill? I will try to answer that question. What has happened, my Lord, is this. When the Bill was first taken up and discussed here, the motion was that it should be referred to a Select Committee. It was referred to a Select Committee. The Select Committee met and considered the Bill and the Members of the Committee expressed their opinions regarding it. Now, my Lord, we have the opinions of some of the Members of the Select Committee before the Council; the opinions of all the Members of the Select Committee are not before the Council. This is one thing that has happened. 3-43 P.M.

"The second thing is that this Council has found now, even from the report of the Select Committee as it is published, that the Indian Members who

have signed the report differed from the majority of the Committee on very important and essential points. They urged certain amendments of a radical character. Those amendments have not been accepted by the Select Committee. When the Bill was referred to the Select Committee there was a hope—such a hope was held out by more than one official Member—that there would be an opportunity in the Select Committee to discuss the important points which had been raised. That opportunity was availed of. It has been found to be fruitless, so far as the main amendments are concerned; and it has become all the more necessary that this important and extraordinary Bill, with the differences of opinion on cardinal points which the Report of the Select Committee even as it is before the Council indicates, should be circulated for opinion to High Court Judges and to other competent persons and bodies in the country.

" My Lord, speaking in support of the amendment moved by the Hon'ble Mr. Banerjea, my friend, the Hon'ble Mr. Shafi, drew attention to one important provision in the Rules for the conduct of Legislative Business, namely, that on being introduced into the Council a Bill should be published in the Gazette and circulated for eliciting opinion thereon. As he reminded the Council, in this instance that very wise and sound procedure had not been followed. The Bill was published under rule 23. But such publication was not meant to dispense with the necessity of circulating a Bill for opinion except perhaps in the case of a Bill of a non-contentious character or a Bill of no great importance. It could not have been meant that a Bill of the importance of the one which is now before the Council published under rule 23 of the Rules of Legislative Business should not be circulated for eliciting opinion. But as that was not done, the fact furnishes a very strong reason for the view that the Bill as it has emerged from the Select Committee should be circulated for opinion. My Lord, in this connection it is important to remember what the provisions of law are. Rule 19 says that when a Bill is introduced, one of the motions which the Member in charge may make shall be that the Bill be circulated for opinion. Rule 25 says after the publication of a Bill in the Gazette of India, the Select Committee to which the Bill may have been referred shall make a report thereon; such report shall be made not sooner than three months from the date of the first publication in the Gazette of India unless the Council orders the report to be made sooner. Then it is provided in rule 26 that the Secretary shall cause every report to be printed and shall send a copy to each Member, and shall cause the Report, with the amended Bill, to be published in the Gazette of India. Rule 27 further provides that the Report of the Select Committee shall be presented to the Council and shall be taken into consideration; but any Member may object to its being so taken into consideration when he has not been furnished for a week with a copy of the Report. I draw attention to these rules to show that the Legislature, in enacting these rules in its calmest moments, thought it fit to provide that a Bill which has been referred to a Select Committee should, with the Report of the Committee, be published so that the people may have ample opportunity of knowing how the Bill has been amended and how it stands. I may draw attention to similar provisions in the rules of business of the Provincial Legislative Councils. For instance, in the Punjab Rules of business it is clearly laid down that, when a Bill is referred to a Select Committee, the Commitee shall examine the Bill clause by clause, and if they, or a majority of their number, decide to recommend any modification in the Bill, the Bill shall be revised so as to bring it into conformity with such recommendation, and the Committee, or a majority of their number, shall make a report on the Bill. A further provision lays down that any member of a Select Committee who desires to record a note of dissent from any such report must forward the same without delay to the Secretary, and the Secretary shall thereupon annex it to the Report.

The Hon'ble Sir George Lowndes:—" My Lord, I submit that the Hon'ble Member is not in order: we have nothing to do here with the rules of other Councils."

His Excellency the President:—"I presume the Hon'ble Member is going to build up his case on these arguments; but he must confine his remarks within certain limits."

The Hon'ble Pandit Madan Mohan Malaviya:—"My object in referring to these rules of business is to support my proposition that ample provision exists for the circulation of a Bill which has been referred to a Select Committee and of the report of that Committee That is my point and I am not going beyond that. I refer to the rules of business of Provincial Councils to show how consistently this provision has been laid down. The next rule to which I was going to refer, my Lord, was that which says that every Report of a Select Committee shall be printed and a copy thereof shall be

His Excellency the President:—"I really think the Hon'ble Member is travelling outside the permission I gave him. I am quite willing that he should use so much of the rules of business as is necessary to show that what we are doing on this occasion is not in accordance with those rules; but he must not be reading out every section of the provincial rules of business."

The Hon'ble Pandit Madan Mohan Malaviya:—"Well, my Lord, I will not read out the sections. I was only drawing attention to the fact, in the language of the rules instead of in my own faulty language, that the Report and the minutes of dissent should be circulated and published in the Gazette, as a provision to secure that full publicity shall be given to the Bill as it has been amended by the Select Committee. A similar rule is to be found in the Bengal Legislative Council Manual, and also in the Bombay, Madras, and Bihar and Orissa Legislative Council Manuals, namely, that when a Bill has been referred to a Select Committee, the Report, together with the notes of dissent, shall be published and placed before the Members and also published in the Gazette. Now, my Lord, this has not been done here, and I submit that the point raised by my friend the Hon'ble Mr. Shafi receives very strong support from that circumstance, and the proposal of the Hon'ble Mr. Banerjea that the Bill and connected papers be circulated for information stands therefore on a stronger footing from what it might have stood upon if the particular course to which exception has been taken had not been adopted.

"Now, my Lord, this much so far as following the rules of business is concerned. The next thing which has happened since the Bill was introduced when the decision was taken not to postpone it, to justify its postponement now is a matter to which the Hon'ble the Home Member has himself referred and to which many other Members have referred, namely, the opposition which has been shown to the Bill since that date, and it is a tremendous opposition. The Hon'ble Member referred to the passive resistance movement which has been started against the Bill, and said that it was regrettable that a man of the character of Mr. Gandhi should have lent his support to such a movement. I will say this, my Lord, that when a man of the saintly character of Mr. Gandhi, who is the best friend that the Government have in this country, than whom there is no better friend of the Government among Indians, has felt it his duty to vow passive resistance in relation to the Bill, that is a matter for the Government to ponder over, to take into the most serious consideration. My Lord, the opposition to the Bills has been spreading far and wide in the country and it has been deepening. That is a new circumstance, and it is the duty of the Government to show reasonable deference to public opinion, and in deference to that opinion to proceed at least at a slower speed than this Government is proceeding. My Lord, the Hon'ble the Home Member said that when the Government had determined that the proposed emergency legislation was necessary,

the opposition raised against the Bill would not affect the attitude of the Government. Well, as my friend, Mr. Jinnah, has pointed out, situated as it is, the Government has it in its power to disregard public opposition. But it is not wise to do so; it is not wise of the Government to disregard the unanimous opposition of every reasonable man among Indians who has had the courage or the opportunity to speak on the Bill. If there be any Indians who have spoken in private to the Hon'ble Mr. Ironside in support of the Bill, we cannot take note of their opinions until they come out in the open to express their opinions .

The Hon'ble Mr. W. A. Ironside:—"They dare not."

The Hon'ble Pandit Madan Mohan Malaviya:—"I am sorry for them. Their opinions are not worth having if they have not the courage to stand up and express themselves publicly in a matter which affects the life and liberty of our people.

"Now, my Lord, that is the second circumstance to which I invite attention. A third fact is that these are questions of expediency, whether the Government consider it wise to defer to public opinion, whether the Government would not gain morally,—which even in politics counts for much more than brute force,—whether the Government will not gain morally if it had the support of the non-official Members here or at any rate the majority of them. That is a matter which the Government may yet ponder over. But, my Lord, there is a more important reason why Government should reconsider its position. I have referred already to the fact that many of the amendments we suggested in the Select Committee and on several of which the Indian Members were unanimous or nearly unanimous, were not accepted by the official majority which sat on the Committee. This Council did me the honour of inviting me to be a Member of that Committee. I accepted the invitation, though I was entirely opposed to the Bill. I accepted it in the hope that there would be opportunity in the calmer atmosphere of the Select Committee to persuade my official friends to take what we regarded to be the correct view of the situation. According to your Excellency's ruling, which with great respect, I wish I could discuss, but which I am precluded from discussing, but which if your Excellency will only allow me to say so with great respect, I consider to be wrong and *ultra vires*.

His Excellency the President:—"I think the Hon'ble Member had better not."

The Hon'ble Pandit Madan Mohan Malaviya:—"Very well, I am not going to discuss it; I only wanted to submit with great respect. I will not go into the question.

His Excellency the President:—"The Hon'ble Member must leave that subject. He knows perfectly well that he is attempting to get a discussion on the subject which under the rules he is not allowed to do."

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, I will only say this much that, as in view of your Excellency's ruling, what I said in my note is not before this Council, that fact compels me to place my views expressed therein at some length before this Council. As I said a little while ago I do not want indirectly to try to do what the rules will not permit me to do. If I want to do anything, I do it in a straightforward way. But as the rules will not permit, I am content to bring before this Council my reasons which I urged in the Select Committee for the abandonment or radical modification of these Bills. Now, my Lord, as I pointed out there, the amendments which have been made in the Select Committee, though mostly useful,

have not touched the main scheme of the Bill. Its policy and principles, its character and scope remain unaltered. If even the most important of the amendments urged by us Indian Members had been accepted, they would have made the Bill less dangerous, and therefore less unacceptable. But the majority of my colleagues in the Committee did not think it fit to do so, and though there are numerous notices of amendments, the attitude of the Hon'ble the Home Member which determines the attitude of the entire official majority in this Council, has shown that there is little hope of our having these matters considered favourably.

"Now, my Lord, I want to draw the attention of the Council to the fact that this measure, as it has emerged from the Select Committee, not being altered in any important respect, is more drastic than the most drastic legislation which was ever passed by Parliament. The Prevention of Crimes Act, 1882, was described as one of the most stringent measures ever introduced into Parliament. It was described by Mr. Dillon as the strongest measure of coercion that was ever passed for Ireland. The present Bill is far more stringent than that Act. Under that Act persons committed for trial for certain offences were to be tried by a Special Commission Court consisting of three Judges of the Supreme Court of Judicature in Ireland. But the Act laid down that a person. .

His Excellency the President :—"I want the Hon'ble Member to remember that he is speaking to an amendment, and if he will show how he is going to build up his argument on what he is reading, I will see if it really has any bearing on the amendment before the Council ; otherwise I shall have to rule him out of order."

The Hon'ble Pandit Madan Mohan Malaviya :—"I shall bow to your ruling, my Lord, but may I submit a point for your consideration before you give your final ruling?"

His Excellency the President :—"Certainly."

The Hon'ble Pandit Madan Mohan Malaviya :—"My point is this: the question now before the Council is whether the consideration of this Bill shall be postponed according to Mr. Banerjea's motion or not. If this motion is carried, it will not be necessary at present to deal with the many other amendments which stand on the paper after his amendment. It is therefore very important from our point of view that we should give every reason why this motion of Mr. Banerjea's should be carried. I wish to point out to the Council how very drastic the Bill is as it stands, and to ask the Council to consider whether the Bill being so drastic as it is, should not be circulated for opinion, so that Government and the Council may be in possession of those opinions before it comes to deal with its provisions. That is the whole object with which I am speaking now. Now, my Lord, that Act of Ireland, the Prevention of Crimes Act of 1882, laid down that the person tried by a Special Commission Court

His Excellency the President :—"Now really that is going much too far. You can deal with this Bill and say how much too far it goes. I really cannot have all the old Acts from other countries brought up before this Council."

The Hon'ble Pandit Madan Mohan Malaviya :—"If your Lordship will kindly let me finish the sentence, you will see how pertinent it is to the subject."

His Excellency the President :—"I have signified my views for the Hon'ble Member, and I hope that he will pay attention to them."

The Hon'ble Pandit Madan Mohan Malaviya:—"The point is this that this Bill does provide that if three Judges are of one opinion, sentence may be passed. I am going to point out that the provision in this Bill is more drastic than the provision in that other Act.

His Excellency the President:—"The Hon'ble Member will have an opportunity of discussing that particular amendment when the particular section comes up. If this Bill is postponed for six months, well then, the Hon'ble Member will be able to discuss it next September. It is quite unnecessary to discuss the point at the present moment."

The Hon'ble Pandit Madan Mohan Malaviya:—"Then, my Lord, I shall say no more."

The Hon'ble Mr. Srinivasa Sastri:—"My Lord, I did not 4-2 intend at first to take part in the debate on this amendment, but certain remarks which fell from the lips of my Hon'ble Friend Mr. Ironside compel me to do so. A certain amount of solemn interest attaches to his remarks as he apprised us that this might be almost his swan song. I was rather surprised to notice that he put a certain amount of tragic note in the observations he made.

The Hon'ble Mr. W. A. Ironside:—"Unintentionally."

The Hon'ble Mr. Srinivasa Sastri:—"A great poet has said in words that are suggestive: 'A little thing may harm a wounded man.' I suspect that the Hon'ble Mr. Ironside has received some sharp stab from a dear and unsuspected quarter, which has made him sensitive to such trifles as his Indian friends have been saying. The Hon'ble Mr. Ironside in the remarks he made has told us something about the Indian Civil Service and something about the Government of India to both of whom he has given a handsome testimonial. I hope they will cherish it. Well, of the Indian Civil Service he said that no one will oppose these reforms, I am bringing the discussion to the point of urgency, your Excellency. The anxiety that they feel that the Bill should pass this Session is not a token that they wish to hinder the reforms. He said that the accusation had been brought against them by somebody or other. The Hon'ble Mr. Ironside cannot have read the recent newspapers very carefully. The attitude of the Indian Civil Service has elicited much unfavourable comment, and it was found necessary to reassure them by your Excellency in the opening speech of this Session that the reforms would not affect their status or their privileges in an adverse way. I have no desire to advert at any great length to these side observations that the Hon'ble Mr. Ironside made. But as he wished to give a setting to the remarks of his Indian friends, it appears to me to be necessary to break upon that setting a little. Then he went on to say that in this country a general concession does not pay and that it is regarded as weakness, and that if the Government of India concedes a little, it is only asked to concede a little more. I am not quite sure that the Hon'ble Mr. Ironside applies that observation to Indian public opinion. Some amount of contrast has been drawn between European opinion in this Chamber and Indian opinion. It appears to me that with far greater justice European lies under the charge than Indian opinion. May I recall a few instances?

The Hon'ble Mr. W. A. Ironside:—"I do not think I differentiated between Indian and European opinion on this question."

The Hon'ble Mr. Srinivasa Sastri:—"I will not attribute the contrast to Mr. Ironside. European and Indian opinion were contrasted at this meeting. I am only concerned to point out to Mr. Ironside that if the Government of India yielded to Indian opinion in this matter, they would not be weakening their position. Recent experience endorses the hope that I am

endeavouring to express. When Indentured emigration was stopped some little time ago, I take it in deference to Indian public opinion, was it considered a sign of weakness by Indian newspapers and publicists going about and proclaiming in the streets that 'the Government of India is tottering, let us bang it still more?' Or did they regard it as an exhibition of moral strength that the Government of India made the concession which had been long due before it was finally granted? Then again with regard to these Reform proposals when they came upon the scene, did they not do a great deal to calm the situation, to quiet down exacerbation and racial antipathies that were then the dominant feature of Indian public life? I do assure the Hon'ble Mr. Ironside and others who think like him that if the Government postpones this measure in deference to our wishes, that will only be strengthening their hold upon Indian public opinion. Mr. Ironside was right but not in the way he meant. The Government of India would in that case only be showing weakness in the eyes of its European critics. That is the point. Generosity pays with us, it does not pay with some sections of the other community. Then, my Lord, Mr. Ironside said in an almost touching way 'after all you do want this measure to deal with a small and unimportant section. Why don't you hand them over to us to be dealt with as seems meet and proper? You the bigger, the honester, the more important section, you need have nothing to do with all this.' Unfortunately my Hon'ble friend Mr. Jinnah in reply to this seemed to acknowledge the force of the remark, only seemed for, knowing his views, I feel sure that he would never have willingly agreed to that. He said 'certainly, we don't mean by our opposition to defend the wicked, we mean by our opposition to defend the innocent'. So far as that went it was correct, but it leaves the real position in my opinion untouched. Your Excellency, the real opposition is this. The men are wicked, the men have been found to be fanatically disposed, they have set their hand to conspiracies. How are these people to be dealt with? The men whom the Government of India suspect to have been connected with fanatical and revolutionary movements, how are they to be dealt with? Not summarily, not without bringing them to a Court of law; they are not to be deprived by a stroke of their liberty of freedom but in certain well acknowledged ways. That is why the Government of India is anxious to secure the co-operation of the Council in passing a measure of this kind. It is a measure of regrettable severity, it is a coercion Bill, and therefore it requires to be defended on extraordinary grounds. It is a matter that cannot be lightly disposed of. You cannot say 'these are wicked people, it does not matter how they are dealt with.' They must be dealt with in accordance with the principles approved by conscience of civilized society. I am very glad that the Hon'ble Mr. Jinnah gratefully acknowledged the advice the Hon'ble Mr. Ironside gave him by giving him some advice in return. The advice that he gave him was to read the history of his own country. I will not go so far to the bottom, but I will ask the Hon'ble Mr. Ironside to study the love of liberty, that is a great trait of his countrymen. I can assure him that the principal feature of the love of liberty is not love of your own, it is not love of liberty for your own community, so long as you are sure that you will not come under the severe operation of these laws. English poets, publicists and statesmen have glowed with pride at the thought that their spirit is love of liberty for others. The lover of the liberty of other communities, the love, especially, of the liberty of those over whom you enjoy political power. It is that love that we want embodied and exhibited in the conduct of this measure, and the first test to which we are putting it is to ask that this measure be postponed.

"Now I am not one of those who think that an Ordinance passed under the authority of the Viceroy is necessarily a superior instrument of legislation to an Act passed by this Legislature. I would never suggest it in ordinary circumstances. It is very well indeed that the Government of India come to us and ask that we should sanction this measure. There is, however, one advantage in the case of an Ordinance, one advantage in the case of the Defence of India Act. They carry on their face the character of being emergent; they carry on the face the character of being very very, temporary. The measure that was originally brought before us did not bear this character

and roused, therefore, a great amount of alarm, and it was chiefly with reference to that measure that most of us suggested that an Ordinance would perhaps have been a preferable way of approaching this question. But I do not regret that your Excellency's Government has brought forward this measure and placed it before this Council now. I am very glad indeed that your Excellency's Government have shown a desire to consult Indian opinion, to take the advice of their constitutional advisers on this most important question. I would ask your Excellency's Government to come to us in the true, earnest spirit, seeking our co-operation and advice and resolved to profit by it, and to act upon it to the extent that you consider desirable. Now you come to us, and we tell you 'please postpone this measure for a Session.' I do not say on the merits I can argue this amendment with very great effect, consultation with High Court Judges, the taking of opinion from Local Governments—for the moment I dispose of it. They are mere secondary reasons, I would not lay stress on them. There is no doubt I look forward to this postponement with hope for the reason that it would give time to all of us to think a little better of this matter. The Government for their part would gain time, and that is what the Hon'ble Mr. Fagan forgot when he asked, 'what do we stand to gain by postponing?' We gain time, we gain time for sober thought, we can gain time for finding out the best settlement of these issues. The Government for their part might perhaps think 'very well, this measure need not, after all, be brought in:' Six months' time might have given them the assurance, especially after the Reforms Bill had been introduced into Parliament, that perhaps it might be just as well to go on for another six months without any special measure on the Statute-book. On the other hand, the people too, reading the various proposals made in Parliament, the people too might think 'very well, now that this Bill has been put up and stands a good chance of being passed, we are getting a good deal of political power, we need not suspect the motives of Government to the same extent that we are now disposed to do.' It is just possible. Is that not a thing gained? I think it is a great moral gain to all sides concerned in this matter, and I should esteem it a great blessing if the Government could be induced, even at this last moment, to regard this amendment not on its own merit, I put it aside, but on the political ground of expediency.

"Now, your Excellency, in reply to the objection that perhaps the passing of this measure might hinder reforms, the Hon'ble Sir William Vincent permitted himself to make the observation, I do not think he insisted upon it very much, I will not say he did it, but he just threw out a rejoinder, 'it is rather more likely that the attitude of Indian members towards this Bill that we have introduced and our failure to carry it or our postponement at your request, might hinder reforms.' Very well, now that puts before us a distinct issue. It is just possible that members of Government are led to press this thing on, among other reasons, also for the reason that it would perhaps facilitate the introduction of the Reforms Bill as early as possible into Parliament, that it would conciliate the strongly adverse English opinion and enable the Secretary of State to come to Parliament with a healing measure of reform. Now I must say, put in that way, the argument does appeal to me with considerable force. But it seems to me, and here the contrast between European and Indian opinions shines out in a most sinister light, it does appear to me that it is ominous that the Government of India should show so much anxiety to conciliate English opinion which is unjust and uncharitable, and so little to conciliate Indian opinion which feels very keenly, that they should be obliged to wait for the reform that has been promised so many years, while the measure of coercion comes so prompt, so heavily, all too premature. Now what is the urgency and that is the point at which my argument must conclude after all? If the Government had come and said to us, there is this emergency that has arisen which we must cope with immediately or face very serious risks, I could understand it, but that is no part of the case of Government. The Bill is called an emergency Bill, but really there is no emergency which you are unable to meet. It is nominally an emergency measure, but really it is intended to cope with no emergency. The emergency is already coped with, the difficulty is

already under, there is nothing that this Bill is especially intended for; the Defence of India Act is there and will be there for good many months yet. You are well armed to meet any difficulty of this kind; you cannot therefore come to us and say, if you do not do this now, the peace of India is in peril. The peace of India will not be in peril, and it is because we have the full assurance that we have given you the power and you have got the power to keep the situation well in hand for another twelve months or so, it is because we are fully assured of that, that we tell you the emergency has not arisen, you are not yet defenceless. Come to us at the right moment. In the meantime allay the alarm and ill-feeling aroused in the country. Your Excellency, let us not be misunderstood. Now and then in the heat of controversy a remark is thrown out, like that which, I think, unconsciously escaped from the Hon'ble Mr. Ironside, are we or are we not to show sympathy with anarchy? He said something of that kind. I do not believe it can be said that because a Member gets up here and asks that this Bill be postponed, or modified in some way, he necessarily shows sympathy with anarchists, or fails to show sympathy with the victims of anarchy. I think that is an unjust imputation which no Hon'ble Member of this Council would willingly make. I have no doubt whatever that now and then when we are swayed by that unhappy spirit of controversy these remarks do escape us, but when they are pointed out to us, I take it we should be charitable enough to give to others that which we should be only too ready to ask for ourselves."

The Hon'ble Mr. K. V. Rangaswamy Ayyangar:—"My Lord, this afternoon your Excellency announced that the meeting of this Council will be continued after the Garden Party, that is, at 6 o'clock. By that we fear that the Government is bent upon hurrying up this measure. My Lord, there is absolutely no hurry for the Government to rush on with this Bill when they have the power to deal with such crimes until they receive the considered opinions of these select bodies recommended by Mr. Banerjea. Bills of minor importance are circulated and the opinions of even significant bodies are sent to us. It is quite just and legitimate that a Bill of such importance as the one under consideration, should be circulated for the opinions of all the High Courts and other bodies mentioned in my amendment, and their opinions should go to weigh with the Government to amend the Bill so as to render it acceptable to the people and make it conform to the traditional sanctity of British justice. I am not like a child crying for the postponement to the next day of a bitter pill that is sought to be administered to it to-day and which is eventually going to be a *fait accompli*, and so I do not at first resort to rule 32 of the rules for the conduct of business and put in a motion for re-committal or republication. I only want to place before the Government this suggestion that it should wait to arm itself with the considered opinions of these respectable bodies in order to win the confidence of the people. That the abrogation of the ordinary law is quite necessary to cope with the situation is yet to be proved. I gave my arguments when I opposed the Bill the first day of its introduction, and the Hon'ble Member who is in charge of the Bill has not yet convinced me that my argument was wrong. On the other hand, the considered opinion of the country is the same as mine. We see now scientists of rare abilities who do not generally dabble in politics put aside their test-tubes and go to protest against these Bills, Sanyasis who do not care for this world come back from their seclusion to protect the people from these Bills, and such sinless and saintly souls as Ghandi who believe in the soul force of the nation and in the foundations of justice and righteousness of the British nation come from their retreats to condemn these Bills in unmeasured terms. The Council is not the proper place to praise or condemn the passive resistance movement, and I will not be justified to utilise my position as a Member of this Council to trumpet forth my own causes and prejudices as two others have unjustly done. 4-23 P.M.

"Lincolns and Clemenceaus may be shot in free countries, but nothing happens there, but in India even after the stray and isolated cases of crime

due to excitement have passed away, the corpus of the whole nation is endangered and action is sought which, I venture to think, is bound to lead to the strangling of political life in this country notwithstanding the protestations to the contrary. The Bill is confined to anarchical and revolutionary crimes no doubt, but I dare say even a paper mill that manufactures paper for an extremist journal and the ink-maker will be connected with an anarchical outrage because they were responsible for the extremist organ.

His Excellency the President:—"Will the Hon'ble Member confine himself to the amendment, please?"

The Hon'ble Mr. K. V. Rangaswamy Ayyangar:—"Yes, that is what I am doing."

His Excellency the President:—"No, not quite."

The Hon'ble Mr. K. V. Rangaswamy Ayyangar:—"Then I want this Council to consider the Report of the Loreburn Committee in England, and in the meantime to postpone this Bill. A reading of the Report of the Loreburn Committee discloses the doubtful legality of some of the Acts passed by the Legislatures here, and the utmost that could be urged by Lord Islington on behalf of the India Office and the Government of India was that it would place the Legislatures in India in a very embarrassing position unless something was done and he wanted the abrogation of section 32 of the Government of India Act (1915) dealing with the right of British Indian subjects to sue the Secretary of State for wrongful acts.

His Excellency the President:—"Really, really, Mr. Ayyangar, I must ask you to confine yourself to discussing the amendment which Mr. Banerjea has put on the paper and not discuss the Loreburn Committee and other matters."

The Hon'ble Mr. K. V. Rangaswamy Ayyangar:—"Mr. Banerjea's amendment is for postponement of the Bill till it has been referred for local opinions, and my argument is that it may be postponed till the Council has considered the Loreburn Committee's Report. I have an amendment similar to this, but I will confine myself to the point urged by Mr. Banerjea. In this country indignation is uppermost and I should have chosen to run away from the Council to the peaceful village where mutual suspicion does not exist, where love and compassion for humanity prevail, and where there is no fierce and unsympathetic opposition. Here in Council even a mild amendment like Mr. Banerjea's is opposed. But the stern fact that unless one is prepared to find a settlement in some other country or some other Government, one should not be prepared to dissociate himself from his civic duties in that Government, persuades me to stop here and only raise my feeble voice of protest that these Bills should not be introduced. As a Councillor with full acknowledgment of the courtesy and magnanimity of Government in summoning us here and the special consideration shown to us by extending our terms also, I beg to remind you of the axiom that when the cargo is too heavy the boat sinks."

P.M. **The Hon'ble Mr. Surendra Nath Banerjea**:—"My Lord, my first words on this occasion would be words of acknowledgment to the Hon'ble the Home Member for, if I may say so without impertinence, the conciliatory speech which he has made in this connection. He has not been able to meet us; he expresses his regret that it is impossible for the Government to accept the amendment which I have placed before this Council. My Lord, I have listened with the greatest attention, interest and respect to the arguments which have been adduced on the Government side, and I must say that I remain unconvinced. Let me take some of these arguments one by one.

"One of the points that I urged was that the Bill, together with the Report of the Select Committee and all connected papers, should be sent to the Local Governments for their criticism. My Hon'ble friend's reply is

that the officials of the Local Governments have been consulted in regard to the sum and substance of the Report of the Rowlatt Commission. I think that is what he said if I have understood him rightly. But, my Lord, it is one thing to discuss the paragraphs of the Report of the Rowlatt Commission, and a different matter to place the Bill before the Local Government and ask the opinion of the Local Government on the provisions of that Bill. The two things stand upon a wholly different footing, and the one issue is not to be confounded with the other. An argument of that kind might be well for an advocate who has a bad case to support, but I hardly think it finds a proper place in the pleadings of a responsible minister of the Government of India advocating a great cause before the Legislative Assembly.

"Then, my Lord, my Hon'ble friend observed in connection with another part of my amendment, namely, that the Bill, together with the connected papers, should be referred to the public bodies, 'Public bodies are at liberty to submit their opinions'; my answer to that is were they asked to submit their opinions? They never were, and my friend knows as well as I do that the ordinary procedure of the Government is to write to these public bodies to submit their opinions and to lay down a definite limit of time within which the opinion is to be submitted. Public bodies do not take the initiative in these matters; they do not unnecessarily thrust themselves upon the attention of the Government. Therefore, it was an omission on the part of the Government not to have consulted the public bodies, and my amendment seeks only to rectify that omission.

"In the third place, with reference to the point taken in my amendment, namely, that the Report of the Select Committee and the Bill and connected papers should be sent to the High Court, my Hon'ble friend observed that there were three Judges of the High Court on the Rowlatt Commission. There was Mr. Justice Rowlatt, a Judge of the King's Bench Division, there was Sir Basil Scott, Chief Justice of the Bombay High Court, and there was Mr. Justice Coomarswamy Sastri, officiating Judge of the Madras High Court. But, my Lord, there was not a single Calcutta High Court Judge there, and it is Bengal that was the province that was the most concerned in the matter and Bengal High Court Judges—I may mention my Hon'ble friend Sir Ashutosh Mookerji—have had the greatest experience and knowledge in dealing with these cases. Was it not right and proper that these Bills should have been laid before them for their opinion?

"Then, my Lord, the Rowlatt Commission reported, I think, it was about 18 months ago. Since then, the circumstances of the province have very considerably changed. And the whole of this Bill is based upon the recommendations of the Rowlatt Commission. Since the submission of this Report the number of *detenus* has sensibly gone down. I think at the time it was about 1,200, the number is now less than 400, and you would not have let off these 800 men unless and until you were quite satisfied that there was no danger to be apprehended from their release. Therefore, from the action of the Government itself, I am entitled to hold that the situation has improved, changed very much for the better. Therefore, the circumstances under which the Report was submitted by the Rowlatt Commission do not exist at the present moment, and, if the circumstances are not the same as they were, say 18 months ago, is it right and proper, expedient, wise, statesmanlike, to legislate upon a situation which has now become more or less a matter of ancient history? I imagine, my Lord, that the law follows the lines of existing conditions and circumstances. They have changed according to the showing of the Government itself. That being so, it seems to me to be indefensible to frame a piece of legislation upon an ancient Report, without more up-to-date light and guidance which might have been thrown upon it by the reports of the High Courts, of the Local Governments, of the public bodies. I think, my Lord, the position which I have taken up is absolutely unassailable. You are legislating upon a comparatively old Report. The circumstances have changed and, therefore, this legislation, based upon that old Report, is indefensible.

The Hon'ble Mr. M. N. Hogg:—"May I ask the Hon'ble Member to inform us of the date of the publication of this old Report?"

The Hon'ble Mr. Surendra Nath Banerjea:—"I said it was 18 months ago: I stand corrected if I am wrong."

The Hon'ble Sir William Vincent:—"The Report is dated April of last year; it was actually published in June or July."

The Hon'ble Mr. Surendra Nath Banerjea:—"We will then take it that it is 12 months old."

The Hon'ble Sir William Vincent:—"Even that would be incorrect."

The Hon'ble Mr. Surendra Nath Banerjea:—"Only by a few days; that makes no difference. The point is this, that within the last twelve months the situation has so quieted down, the position in Bengal has been so tranquillised, that the conditions under which that Report was made do not now exist, and any legislation based upon those conditions cannot be justified. That is the position which I take up, and I venture to submit that that position is unassailable.

"Now, my Lord, it has been suggested, I think, by my Hon'ble friend Mr. Fagan that we, the Members of this Imperial Legislative Council, represent the quintessence of universal wisdom that may be found in India. I am quite proud of that compliment; I am sure all of us feel elated that such a compliment should have come to us from a representative of the Punjab. But, my Lord, though we may be, all of us, as wise as Solomon, the difficulty is this. Before we form our judgment upon any matter, come to a decision upon any subject, we must have materials placed before us to enable us to form a right judgment. What are the materials that are before us now in order that we may legislate upon this matter? The only materials that we have consist of the recommendations of the Rowlatt Commission. The other materials which would have enabled us to come to a more enlightened judgment, as I feel, would have been the opinions of the High Courts, the opinions of the Local Governments and public bodies. Thus, my Lord, we are reduced to this position that here we are called upon to legislate upon matters affecting the rights and liberties of a section of the community, to legislate under conditions which have excited the greatest apprehension and alarm; we are called upon to perform this responsible duty without the necessary materials. Therefore, without the light and guidance that we need in the performance of so responsible and onerous an obligation, I think I may safely assert, my Lord, that by declining to accept my amendment, your Excellency's Government places us in a very difficult and embarrassing position. You may be convinced of the justice and necessity of this piece of legislation. We are not equally convinced, and we point to considerations which in our judgment make it desirable that the legislation should be postponed; you are not willing to listen to us. My Lord, it has been said, and the question has been answered by one or two of my friends, that, if the Government were to accept my amendment and to postpone legislation till the autumn Session, that would be a sign of weakness, it would be really the acquiescence of Government in the clamour of public opinion. I cannot accept that view at all. A strong Government knows when and how to yield. The British Government is the strongest in the world. The Government of India modified the partition of Bengal after a period of nearly seven years because it was an unjust measure. The Government of India settled that unhappy controversy about the Cawnpore mosque by recalling its former orders. My Lord, to yield is the sign of strength when one knows when and how to yield. Nobody will regard your concession upon a matter of this kind, on an occasion like this, as a concession to popular clamour. It will be received with gratitude and enthusiasm, and

I feel convinced that, if your Excellency's Government accepts the amendment which I have the honour to move, much of the agitation and excitement which now prevail in the country will disappear. But, my Lord, if the Bill is passed this Session, I fear it will give rise to agitation, intense, universal, and, I fear, acrimonious, which will disturb the calm atmosphere which now prevails, and I cannot help thinking that it may even jeopardise the passage of the Reform Scheme through Parliament.

"The reactionaries in England will say 'India is now seething with excitement, with the spirit of conflict and controversy. Let us tranquillise, pacify India and then there will be time enough to think of the reform proposals.' Thus, my Lord, in the interests of the Reform Scheme, to which the credit of your Excellency's Government is pledged and to whose passage through Parliament we are all anxiously looking forward with interest and expectation—in the interest of those reform proposals—I appeal to your Excellency's Government to accept the golden mean which I have suggested and which is embodied in the amendment I have put before this Council. I do hope that the Government of India will reconsider the question in the light of the discussion that has taken place here in this Council Chamber. Indian opinion is absolutely united in regard to it; and if that is so, is it not wise and expedient to defer to it, accept that expression of Indian opinion and spread contentment and satisfaction throughout the land. The situation will be eased, the agitation will disappear, a calm atmosphere will be re-established throughout the length and breadth of the land. That is an achievement worthy of your Excellency and the great Government over which your Excellency presides."

The amendment was put and the Council divided as follows :—

Ayes—25.	*Noes—36.*
The Hon'ble Sir Gangadhar Chitnavis.	His Excellency the Commander-in-Chief.
Mr. S. N. Banerjea.	The Hon'ble Sir Claude Hill.
Raja of Mahmudabad.	,, Sir Sankaran Nair.
Dr. T. B. Sapru.	,, Sir George Lowndes.
Pandit Madan Mohan Malaviya.	,, Sir Thomas Holland.
Mr. S. Sastri.	,, Sir William Vincent.
Mr. R. Ayyangar.	,, Sir James Meston.
Mr. B. N. Sarma.	,, Sir Arthur Anderson.
Mir Asad Ali, Khan Bahadur.	,, Mr. W. A. Ironside.
Sir Dinshaw Wacha.	,, Sir Verney Lovett.
Mr. V. J. Patel.	,, Mr. H. F. Howard.
Mr. M. A. Jinnah.	,, Sir James DuBoulay.
Sir Fazulbhoy Currimbhoy.	,, Mr. A. H. Ley.
Rai Sitanath Ray Bahadur.	,, Mr. W. M. Hailey.
Maharaja Sir M. C. Nandi.	,, Mr. H. Sharp.
Nawab Ali Chaudhri, Khan Bahadur.	,, Mr. R. A. Mant.
	,, Maj.-Genl. Sir Alfred Bingley.
Rai Krishna Sahay Bahadur.	,, Sir Godfrey Fell.
Raja of Kanika.	,, Mr. F. C. Rose.
Khan Bahadur Allahando Shah.	,, Mr. C. H. Kesteven.
Khan Bahadur Mian Muhammad Shafi.	,, Mr. D. deS. Bray.
	,, Lieut.-Col. R. E. Holland.
Sardar Sundar Singh.	,, Surgeon-General W. R. Edwards.
Mr. G. S. Khaparde.	,, Mr. G. R. Clarke.
Rai B. D. Shukul, Bahadur.	,, Mr. H. Moncrieff-Smith.
Mr. K. K. Chanda.	,, Mr. C. A. Barron.
Maung Bah Too.	,, P. L. Moore.
	,, Mr. M. N. Hogg.
	,, Mr. T. Emerson.
	,, Mr. E. H. C. Walsh.
	,, Mr. C. A. Kincaid.
	,, Sir John Donald.
	,, Mr. P. J. Fagan.
	,, Mr. J. T. Marten.
	,, Mr. W. J. Reid.
	,, Mr. W. F. Rice.

The amendment was therefore negatived.

SGPI,Delhi—335 LD 26-3-19—30.

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Extract from the Proceedings of the Indian Legislative Council assembled under the provisions of the Government of India Act, 1915. (5 & 6 Geo. V, Ch. 61.)

The Council met at the Council Chamber, Imperial Secretariat, Delhi, on Wednesday, the 12th March, 1919.

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CRIMINAL LAW (EMERGENCY POWERS) BILL— (*Contd.*)

The Hon'ble Mr. Kamini Kumar Chanda :—" My Lord, I beg to withdraw my amendment— 6 P.M.

'That the Bill as amended by the Select Committee be republished and circulated for the opinion of, among others, the High Courts and Chief Courts.' "

The motion was, by leave, withdrawn.

The Hon'ble Mr. G. S. Khaparde :—" My Lord, I move— 6-1 P.M.

' That the Bill be republished in the Gazette of India in English and in all the provincial gazettes in English and in the principal vernaculars of each province.' "

The motion was put and negatived.

The Hon'ble Mr. K. V. Rangaswamy Ayyangar :—" My Lord, I beg to move my amendment, which runs as follows :—

' That the Bill as amended by the Select Committee including the minutes of the Hon'ble Messrs. Patel, Khaparde and Malaviya be referred to Local Governments, High Courts and public bodies, such as municipalities and district boards and such political bodies as the Government deems fit to consult for criticisms.'

The amendment consists of two parts, the more important part having been discussed the whole day and we had a remarkable success, unprecedented in the life of this Council. The second part was no doubt ruled out of order by the President and the amendments brought in by the Hon'ble Messrs. Patel, Khaparde and Shukul were overruled as they impeached the Select Committee's Report and mine aims at the inclusion of the minority's vote of dissent. Since it fortunately was not overruled by the President, I beg to move my amendment and to take the decision of the Council."

The motion was put and negatived.

The Hon'ble Mr. Kamini Kumar Chanda :—" My Lord, I beg to move my amendment— 6-2 P.M.

' That the revised Bill be recommitted to the Select Committee with instructions to report to the Council during the next Simla Session.' "

The motion was put and the Council divided as follows:—

Ayes—15.

The Hon'ble Mr. S. N. Banerjea.
Dr. T. B. Sapru.
Pandit M. M. Malaviya.
Mr. S. Sastri.
Mr. Ayyangar.
Mr. B. N. Sarma.
Mir Asad Ali, Khan Bahadur.
Mr. V. J. Patel.
Mr. M. A. Jinnah.
Sir Fazulbhoy Currimbhoy.
Khan Bahadur Mian Muhammad Shafi.
Sirdar Sunder Singh.
Mr. G. S. Khaparde.
Rai B. D. Shukul, Bahadur.
Mr. K. K. Chanda.

Noes—37.

His Excellency the Commander-in-Chief.
The Hon'ble Sir Claude Hill.
Sir Sankaran Nair.
Sir George Lowndes.
Sir Thomas Holland.
Sir William Vincent.
Sir James Meston.
" Sir Arthur Anderson.
Mr. Ironside.
Sir Verney Lovett.
Mr. H. F. Howard.
Sir James DuBoulay.
Mr. A. H. Ley.
Mr. W. M. Hailey.
Mr. H. Sharp.
" Mr. R. A. Mant.
Major-General Sir Alfred Bingley.
Sir Godfrey Fell.
Mr. F. C. Rose.
Mr. C. H. Kesteven.
Mr. D. deS. Bray.
Lieut.-Col. R. E. Holland.
Surgeon-Gen. W. R. Edwards.
Mr. G. R. Clarke.
Mr. H. Moncrieff-Smith.
" Mr. C. A. Barron.
" Mr. P. L. Moore.
" Sir Dinshaw Wacha.
Mr. T. Emerson.
Maharaja Sir M. C. Nandi.
Mr. E. H. C. Walsh.
Mr. C. A. Kincaid.
Sir J. Donald.
" Mr. P. J. Fagan.
Mr. J. T. Marten.
Mr. W. J. Reid.
Mr. W. F. Rice.

The amendment was therefore negatived.

His Excellency the President:—"The loss of that amendment carries with it the loss of his next amendment * to which Mr. Chanda has agreed."

* That the following members be added to the Select Committee:—
(1) The Hon'ble Sir Claude Hill.
(2) The Hon'ble Sir C. Sankaran Nair.
(3) The Hon'ble Mr. Jinnah.
(4) The Hon'ble Mr. Sarma.
(5) The Hon'ble Mr. Mazharul Haque.

6-9 P.M. **The Hon'ble Mr. V. J. Patel**:—"My Lord, I have the honour to move the following amendment:—

'That to the motion for taking the Report of the Select Committee into consideration the following words be added, 'this day 1921'.'

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"My Lord, the Council will see that this is a very simple amendment. It merely proposes to add two words at the end, and the Hon'ble Member's motion if amended accordingly will read as follows:—

'That the Report of the Select Committee on the Bill to make provision in special circumstances to supplement the ordinary criminal law and for the exercise of emergency powers by Government be taken into consideration this day 1921.'

"My Lord, there is an essential difference between the motions by my Hon'ble friends Mr. Banerjea, Mr. Chanda and Mr. Khaparde and this motion. This motion does not want the republication of the Bill, it does not want its reference to the High Courts or the Local Governments or the various political bodies in the country, it does not want anything of that kind. On the contrary, it wants that the Bill be taken into consideration, but taken into consideration only when there is calm atmosphere in the country. To take into consideration a matter of so great an importance really requires, I venture to submit, a calm atmosphere. We have been for the last two years, or for a year and a half at any rate, hearing a good deal of the desirability of securing a calm atmosphere in India, and if such atmosphere is needed for the consideration of any problem, it is indeed so needed in this particular case which affects the liberties of 300 millions of people. But as it appears the majority of this Council has made up their minds to go on with the Bill, I would put this further argument that in a court of law the lawyers always say, when a Judge expresses an opinion regarding the guilt of the accused, the accused is entitled to apply for a transfer. So in this matter also from the various statements that have fallen from the Hon'ble the Home Member we have found that Government is determined to carry this measure through, and have expressed their opinion definitely regarding its merits. I therefore pray that this matter be not considered by this Council, but by the Council to come into existence in 1921. It is a reasonable request your Excellency will see, and this is so important a measure that when the majority of the Council have made up their minds, I ask that the matter be postponed and taken into consideration by the Council that will come into existence in 1921. We know that in 1920 the term of this Council will expire and the new Council will come into being in 1921. That will be a Council without an official block determined to carry the measure through. The representatives of the people will be on the Council, there will be at least two-thirds elective majority on it, and I daresay if they see any necessity for a measure of this kind they will pass it. I do not think I can usefully add anything more in support of this amendment, and I trust the Council will see its way to accept this modest amendment."

The Hon'ble Sir William Vincent:—"My Lord, the Hon'ble Member has described his amendment as a very modest one; it appears to me however that he bases his statement chiefly on the fact that it is contained in three words—not in two words as he says,—the effect of which will be to postpone the consideration of this Bill for two years. As I have already tried to explain to the best of my ability to this Council, we consider this measure as one of great urgency, and much to our regret we had to decline to accept a motion from the Hon'ble Mr. Banerjea to republish the Bill as this would have involved six or nine months' delay in passing it. My Lord, in those circumstances, I think the Council can hardly expect the Government to accept a motion which postpones the consideration of the Bill for a period of two years and leave us for that period entirely powerless to cope with revolutionary crime of a very dangerous character." 6-13 P.M.

The Hon'ble Mr. V. J. Patel:—"My Lord, the Hon'ble Member's reply is, I submit, rather a misleading one. My Hon'ble friend Mr. Banerjea's amendment was not for the purpose of postponing this measure. It was for the purpose of getting opinions from the High Courts and Local Governments and political associations. I want nothing of the kind. I say, let it be considered when calm atmosphere prevails. I want nothing more. With these words I would ask the Council to accept this amendment." 6-14 P.M.

The motion was put and the Council divided as follows:—

Ayes.—10.	*Noes—37.*
The Hon'ble Mr. S. N. Banerjea.	His Excellency the Commander-in-Chief.
Raja of Mahmudabad.	The Hon'ble Sir Claude Hill.
Pandit Madan Mohan Malaviya.	,, Sir Sankaran Nair.
Mr. R. Ayyangar.	,, Sir George Lowndes.
Mr. B. N. Sarma.	,, Sir Thomas Holland.
Mr. V. J. Patel.	,, Sir William Vincent.
Mr. M. A. Jinnah.	,, Sir James Meston.
Mr. G. S. Khaparde.	,, Sir Arthur Anderson.
Rai B. D. Shukul, Bahadur.	,, Mr. W. A. Ironside.
Mr. K. K. Chanda.	,, Sir Verney Lovett.
	,, Mr. H. F. Howard.
	,, Sir James DuBoulay.
	,, Mr. A. H. Ley.
	,, Mr. W. M. Hailey.
	,, Mr. H. Sharp.
	,, Mr. R. A. Mant.
	,, Maj.-Genl. Sir Alfred Bingley.
	,, Sir Godfrey Fell.
	,, Mr. F. C. Rose.
	,, Mr. C. H Kesteven.
	,, Mr. D. deS. Bray.
	,, Lieut.-Col. R. E. Holland.
	,, Surgn.-General W. R. Edwards.
	,, Mr. G. R. Clarke.
	,, Mr. H. Moncrieff-Smith.
	,, Mr. C. A. Barron.
	,, Mr. P. L. Moore.
	,, Sir Dinshaw Wacha.
	,, Mr. M. N. Hogg.
	,, Mr. T. Emerson.
	,, Mr. E. H. C. Walsh.
	,, Mr. C. A. Kincaid.
	,, Sir John Donald.
	,, Mr. P. J. Fagan.
	,, Mr. J. T. Marten.
	,, Mr. W J. Reid.
	,, Mr. W. F. Rice.

The amendment was therefore negatived.

6-18 P.M. **The Hon'ble Mr. G. S. Khaparde** :—"The amendment which I have to put forward reads as follows:—

'That the Bill be not taken into consideration until the Governor General in Council receives from Parliament an express authority by an Act of Parliament to pass it.'

"This raises an important question on which I touched when the Bill was introduced, but I naturally did not develop the argument then because the motion was that leave be given for the introduction of the Bill. Now I believe is the proper time to raise it. I raised it in the Select Committee and it was said I could not raise it there and this was the proper place. I wish to make the matter as untechnical as I possibly can. It is that India is something like a lady who suffered, at one time at any rate, from a great excess of wealth and excess of philosophy, and in the excess of philosophy she neglected to fight and forgot in course of time the art of war, and wealth naturally brought trouble, so Providence sent her younger sister from the West to help her and the younger sister said 'I will look after your house and be your trustee and see you do not come to any harm; I will protect you from external aggression, keep internal peace and be a good sister.' Then naturally the sister could not come over bodily, so she appointed officers or agents here. I suppose her most trusted officers, her best sons she gave us here, but she was not quite sure that her agents would not fall a prey to some temptation or other, so England said 'Yes, you can manage

these estates and so on, but there are certain fundamental things which I shall reserve to myself, and if you want to deal with these things you must come to me and take my permission before you do anything at all.' This is a story shortly told by me, but if we take away the figures of speech from it, it comes to this that our supreme Legislature is Parliament. I suppose no authority is needed for that statement. This Legislature in which I have the honour to sit at present is a subordinate Legislature. The English Legislature has no completely written basis ; it is partly written and a great deal oral and traditional and based upon conventions and so on. Fortunately for us here we have our constitution entirely written and it goes into numerous Acts, but I need not trouble the Council with all of them. We will take the latest of them, that is the Government of India Act of 1915. The two sections that are most important in this Act are sections 32 and 65. I shall not deal with the questions under section 32 because they do not arise in this connection, but the question that arises here specifically is under section 65. I will read the proviso only :—

'Provided that the Governor General in Legislative Council has not, unless expressly so authorised by Act of Parliament, power to make any law repealing or affecting—

(*i*) Any Act of Parliament passed after the year one thousand eight hundred and sixty and extending to British India (including the Army Act and any Act amending the same).'

"That is the important part of it and the next portion is not essential. Then it goes on :—

'and has not power to make any law affecting the authority of Parliament, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom.'

"So the present legislation comes within the purview of both these clauses. It comes under Act of Parliament passed after the year 1860, and the Act on which I rely was passed in 1861, and it fulfils the condition of the proviso clause (*i*) which I have read. It also fulfils the condition that follows in clause (*ii*), namely, it affects the allegiance of the British subjects in India to the Crown. British subjects in India consist of two classes, Indian British subjects and what we usually call British born subjects ; that is to say Englishmen born in England and bringing with them their personal law who have come here to settle down or do business and are regulated by this Act. Also Indian British subjects, that is to say Indians born in British India. I see from the preamble to this Bill that the Government have introduced that clause which usually does not appear—'whereas the previous approval of the Secretary of State in Council has been accorded.'

"That clause saves them from this part of it that they can legislate for British born subjects having got the consent of the Secretary of State. This is not usually put in, but it has come in, I suppose, to prevent British born subjects from raising a difficulty about it. But the real difficulty remains and that difficulty is that this law in so far as it directs that the liberties of a person will be taken away, and his property also by order of the executive, and directs further that no appeal shall lie about these matters, distinctly invades the legislation made by Parliament on the point usually called fundamental rights.

"It directs further that no appeal or suit shall lie about these matters. I say it distinctly invades the legislation made by Parliament on the point and also what we usually call fundamental rights. The fundamental rights are given by Mr. Dicey in his book, and even a very brief glance at English history will show that it was in the reign of King John that the Barons fought the matter out and made the monarchy what is called a limited monarchy. A limited monarchy means that the powers of the Crown are limited by the powers of the magistracy. The highest magistracy for Great Britain is the House of Lords and without the permission of the magistracy, the King could not arrest anybody nor take away his property, and so on. Those were the rights which came within the Magna Charta and the Bill of Rights that would

turn upon this point, namely, that the liberties of a subject and his property shall not be taken away without a judicial sentence or without the decree or order of a proper Court. This law, the common law of England, is also a fundamental right that was given to the Indians. The Proclamation of Her late Majesty Queen Victoria and subsequent Proclamations have conferred all these rights on British Indians, and these rights cannot be taken away by any piece of legislation passed by this Hon'ble Council. They would have to go to Parliament to get these rights reduced or curtailed in any way.

"Now, the first point that I wish to make is that such great importance is attached to this right in England that, even when there was imminent danger of invasion and the Defence of the Realm Act had to be passed, even then they did not touch this cherished right of Englishmen. The first article of the Defence of the Realm Act reads as follows :—

'The ordinary avocations of life and the enjoyment of property will be interfered with as little as may be permitted by the exigencies of the measures required to be taken for securing the public safety and the Defence of the Realm and the ordinary civil offences will be dealt with by the civil tribunals in the ordinary courts of law.'

This was passed in England at the time when there was imminent danger of invasion from without, and I believe some German spies had found their way into England and there was danger of trouble they were likely to cause. On the model of this Defence of the Realm Act the Defence of India Act was passed here, and we went much further than the Defence of the Realm Act went. Under the Defence of the Realm Act an Englishman could not be interned for more than six days from the day of his arrest. On the seventh day he has got to be produced before a Magistrate

The Hon'ble Sir George Lowndes :—"May I interrupt the Hon'ble Member? I should be very grateful if he would give me the section of the Act which provides for that?"

The Hon'ble Mr. G. S. Khaparde :—"I can do so if you will kindly give me a copy of the Act."

The Hon'ble Sir George Lowndes :—"I have not got a copy with me. The Hon'ble Member has made a statement and I am only asking him to help me to verify it."

The Hon'ble Mr. G. S. Khaparde :—"I had the book with me, but unfortunately it was borrowed from me. There are, however, enough lawyers in this Council to remember that point. I remember it distinctly because I studied it very carefully. I mean that when a person is arrested, within seven days he has to be produced before a Magistrate and, as an Englishman he has the option of saying that he will be tried by a civil tribunal and that he shall not be tried by a court-martial, and in that case he is tried by a civil tribunal, whereas the case of a foreigner is differently dealt with, and that is a matter with which I have no concern. In India, we British Indians, having those rights given to us, also say the same thing, though not to that extent or to that degree. But we also say that our liberties and properties shall not be taken away unless by the sentence of an ordinary Court of the land, not by special tribunals nor by special procedures. Anyhow, the point is that we attach the same importance to these rights as are attached to them in England.

"Well, it is not an *à priori* argument that I am urging from books, but can support it by instances which I am able to quote. The first case on that point that came up and succeeded is the well-known Moment case which has already figured in the debates here. That was a case, I think, of land taken up by Government for various purposes; it may be under the Burma Land Acquisition Act; we are not concerned with the facts, but in that there was a provision that, with respect to that land or anything of that kind, no suit would lie against the Secretary of State. Mr. Moment who, I suppose, was properly advised, brought a suit which was rejected by the Court of first instance in

Burma. Then he went to the Chief Court in Rangoon and the Judges there decided the case in his favour. Then the Secretary of State appealed to the Privy Council, and in the Privy Council the judgment of the Chief Court was affirmed, and it was said that the Local Government or the Government of India could not legislate so as to take away the right of a person to bring a civil suit against the Secretary of State. It is a very interesting matter and naturally fascinating. It appears that the question went before the House of Lords in connection with the Government of India Consolidation Act, and then there was a joint committee of the House of Lords and the House of Commons presided over by Chief Justice Lord Loreburn. By the kindness of the Home Department I got a glimpse of the Report. It cannot be confidential because I found that it is partly reproduced in this book which I borrowed from your Excellency's library. That led me to it and the Home Department very kindly lent me that Report to look at and then I took the liberty of making a few extracts so that I might be able to speak about them to your Excellency and this Hon'ble Council. It is very interesting, and such members as feel inclined to go into this matter will kindly borrow that book and go through it. I will read out to your Excellency only a few sentences from what Lord Loreburn thought would happen if this piece of legislation was left unchallenged. He says:—

'In the Defence of India Criminal Act, 1915 (that is the Act with which we are more concerned than anything else because this Bill seems to perpetuate very largely the provisions of that Act), there is a clause saying that the judgment of the Commissioners shall be final and conclusive. It might be that the Commissioners might say that the Secretary of State for India had done right and then it might be pleaded that he had even been pronounced to have done right, and, therefore, he could not be sued at all.'

That is the kind of argument that would go on and this was the danger pointed out by Lord Loreburn. The arguments of Sir John Jardine, whom from my childhood upwards I have learnt to respect very greatly as a great lawyer of Bombay

The Hon'ble Sir George Lowndes:—"I think my Hon'ble friend is confusing Sir John Jardine with Mr. James Jardine. Sir John Jardine was an Indian Civilian and a Judge, but was never a practising lawyer in Bombay."

The Hon'ble Mr. G. S. Khaparde:—"I am so sorry; he used to be our examiner in the University. Sir John Jardine makes this observation, that 'it would protect the Secretary of State with regard to any tort, however grievous, to which he might have subjected a subject if he broke through these fundamental laws, put people under unjust Judges or let people buy their offices and then sit in judgment or anything of that kind, and an Act was passed to make that legal, he could validate that by future legislation.'

"He goes on to say what the consequences would be if such a thing were permitted. For this, they brought in a consolidation measure and in the consolidation measure they introduced a clause validating all these Acts that had been passed in India. There were as many as 30 of these Acts, in which this provision, which is said to be *ultra vires*, is repeated, after the Moment case. Before it there were as many as a hundred and more Acts containing the same or similar provision. All this, I submit, is unauthorized legislation. Lord Islington, the Under Secretary of State for India, admitted this at the time the Act was passed that it was a most inconvenient Act to pass, but that there were these 30 Acts to be dealt with. He made certain observations—I do not propose to read them; but he went on to say that there may be this inconvenience and it may be a difficult thing to prevent all these inconveniences, the laws having been passed in that way and so on, but there is the old Latin proverb—I do not know Latin—but the proverb says that you have to do justice even if the heavens fall. You have got to admit that two and two do make four, no

matter what the consequences of that may be. And so the Bill was justified.

"I have only told this story because it touches on one point. In clause 41 of this Bill your Excellency will find that this matter of civil suits is brought in, and it is laid down that nobody is able to bring a civil suit against the Secretary of State There has been one instance in which this power which is taken by the Bill was in question. This was a case about land; but I believe people value their liberties quite as much as their lands; and if property cannot be taken away by the Secretary of State or by a piece of legislation in this Council, neither can the liberties of the subject be taken away by a piece of legislation in this Council. Under the present law a person can be imprisoned or interned, which is, I suppose, another name for imprisonment, imprisonment in his own house or the house of a friend and sometimes in a jail. Whatever it is, it is there, and that is a curtailment of his liberty, and his property, namely, his papers and books, can be taken away. How are they to be taken away? Not by being produced before a Magistrate or Judge, but by the authority of the Local Government alone, and this is the part of that section to which great exception will be taken and is being taken now. Not that we do not recognise that the Local Government will act with the best of motives. We quite recognise that. We also recognise that the Local Government will do their best to see that no injustice is done. All that is true, but it does not save the Act from being difficult of acceptance. If we are merely to go by the motives which inspire people, I fully believe that those people who instituted the Inquisition believed, honestly believed, that they were doing good to the men whom they were punishing; but all the same the world is now agreed that they were wrong.

"Similarly, all this about the Government's honesty of purpose and so on is very commendable, but in my opinion—it is a humble opinion—that does not take away from the legal objection to the Act. And that objection is this. A man may be found to have committed a crime in the presence of a hundred people or a thousand people. Everybody knows about it, and yet the Government will not be right in getting hold of the man and hanging him at once. He will have to be taken before a Magistrate, properly tried and then punished. That is the right way. We go into the forests to shoot; yet there are laws of shooting; we do not take advantage of anything that would be 'unsportsmanlike'—I think it is so called. So even a wicked man has to be punished but by rule and after a fair trial. But under this Act there is to be no trial; the man is not produced before any Magistrate or any Judge; there is no right of appeal. Those are other things about which I shall speak when the time comes. For the present my objection to this legislation is that it is beyond the competence of the Council to pass it. It is beyond their competence because it takes away the fundamental rights of a British Indian subject. It also takes away the fundamental rights of a British born subject. The difficulty that would arise in a case of this kind would be that, if this matter is not taken into serious consideration, it might happen that some one would take this case to the House of Lords, and then we should have a similar difficulty to that which arose in the Moment case to face. Nobody likes to lose a case. I should be very angry if I lost a case. And a repetition of the Moment case in a matter of this kind would lead to all sorts of difficulties.

"The next point to which I wish to refer and on which I wish to speak in some detail is this. The clause to validate legislation in India that was introduced was objected to by Lord Loreburn, by Sir John Jardine and by a number of Members. Ultimately it was dropped and the Government withdrew it with these words. I shall read from a printed book—it will be easier to read—not the exact words but the substance of it. The Under Secretary of State for India, Lord Islington, before moving that the House resolve itself into Committee, said:—

'It may be convenient if at this stage I made a short statement informing your Lordships of the alterations that have been made . . . . Paragraph (*d*) of clause 2 has been omitted. The intention of this paragraph was to validate certain Indian enactments whose validity has

recently been called into question by a decision of the Privy Council. Serious objection to this was raised by Chambers of Commerce and other bodies, both on the merits of the proposal and because it was urged that it was of such a universal character that it should not be inserted into the Bill at this juncture.'

"The Joint Committee unanimously withdrew this paragraph from the Bill and eventually this paragraph was withdrawn. So the attempt that was made to legalise and to validate these provisions failed, and the Under Secretary of State for India had to withdraw those clauses and the law remains as it originally was. That is to say, it has been proved by a judicial decision in one case—and for the rest we have got to interpret the law in the light of that decision—it has been proved, I say, that no Act that we can pass in this Council can take away or curtail the fundamental rights, that is to say, rights of liberty or property, from individuals without a judicial sentence, without the case passing through the hands of Her Majesty's Judiciary and what are called the ordinary courts of the land, not by special tribunals and so on. It is in this view of the case, which I have endeavoured to put as briefly as I could and as popularly as I could, that this Bill which is now before us seems to me *ultra vires*, in so far as it seeks to substitute the executive for the judiciary. Your Excellency will find that in Parts II and III the case of a person who is suspected is dealt with; the Local Government makes an order and then they send that order, I suppose, to what they call an investigating authority. The investigating authority generally is more or less an authority which is neither judicial nor executive. It is not judicial because it does not follow all the procedure laid down by law; also it pronounces no sentence; and it is not executive because it has got no power of its own; it does nothing of its own motion. Well, the Local Government submits some statements to that judicial investigating authority and, when they receive the reports of the investigating authority, they say 'the report looks all right; it is correct'; and then action is taken and the man arrested and detained and so on. This, I submit, is against the fundamental rights and the laws guaranteed to us by Royal Proclamations and by Acts of Parliament, more especially the Act of 1861. Then there is a further Act and the present Act of 1915 also does the same; and if any of those Acts are affected by this legislation, I submit it would be *ultra vires*. This is the proposition which I wish to submit for the consideration of this honourable Council. Of course I have not dealt with some of the legal and other aspects of the matter, but I have stated what I thought would be easily understood even by the people."

The Hon'ble Mr. M. A. Jinnah:—"My Lord, I only wish to intervene for the purpose of supplying information. The Hon'ble the Law Member said he wanted to know the section that Mr. Khaparde referred to. I think he probably referred to this, namely, the Amendment Act, 5 Geo. 5, c. 34, section 1 (2). I am not concerned with the relevancy of it at all. 6-48 P.M.

The Hon'ble Sir George Lowndes:—"I am very grateful to the Hon'ble Member for the information. Will Mr. Khaparde accept the child that is fathered upon him?"

The Hon'ble Mr. M. A. Jinnah:—"It says this: 'Where a person being a British subject but not being a person subject to the Naval Discipline Act or to military law is alleged to be guilty of an offence against any regulation made under the Defence of the Realm Consolidation Act, 1914, he shall be entitled within six clear days from the time when the general nature of the charge is communicated to him to claim to be tried by a civil court with a jury instead of being tried by court-martial or where such claim is made in the manner provided by the regulations, etc., etc."

The Hon'ble Mr. G. S. Khaparde:—"That is the section I was referring to."

6-50 P.M. **The Hon'ble Sir George Lowndes :**—" My Lord, at this late hour of the evening I have no desire, whatever my Hon'ble friend, Mr. Khaparde, may have, of turning this Council Chamber into a court of law, and I entirely deprecate long legal discussions which in their proper place my Hon'ble friend will no doubt be able to elaborate. I propose to deal with this too very shortly as the motion is merely that this Council should defer passing this Bill until it has asked Parliament for special sanction to do it. Has any case been made out for that proposition ? I say absolutely none whatever. In the first place, let me distinguish what seemed to me in my Hon'ble friend's argument to require distinction, that is to say, the argument which he wished to base on section 65 (2) of the Government of India Act, which, as Hon'ble Members remember, deals with allegiance to the Crown and the arguments founded on the Moment case. For Heaven's sake let us take the Moment case out of the discussion. I assure this Council that it has nothing to do with the point. I can see no reason whatever for bringing it in except the not unusual anxiety of a lawyer to make a question appear more difficult than it really is. When we come to clause 41 of the Bill we can hear Mr. Khaparde on the Moment case. But let me assure the Council that the Moment case deals with civil law and has nothing whatever to do with criminal law. The Moment case is based on section 32 of the Government of India Act, which says that every person out here shall have the right of filing a civil action against the Secretary of State which he could have filed against the East India Company. It has nothing whatever to do with criminal proceedings. In Heaven's name I say let us get that out of the way. It has got nothing whatever to do with this motion.

" The point that Mr. Khaparde has raised is exactly the point that he raised the other day when this Bill was first before the Council, and which I then attempted to answer, namely, that this is a Bill touching the liberty of the subject, and that as touching the liberty of the subject it touches his allegiance to the Crown within the meaning of section 65 (2) of the Government of India Act. Well, I spoke on this last time. I have not the faintest intention of repeating my arguments. I had the satisfaction of knowing that they appealed to a good many members in this Council, and if they did not appeal to my Hon'ble friend, Mr. Khaparde, I can only regret it; I bow to his superior knowledge on the subject. But just let me point out one thing, and let us not make fools of ourselves here : 101 years ago Regulation III of 1818 was passed, which gives the Government executive power to restrict the liberty of the subject. For more than a century that has been part of the law of the land, and Mr. Khaparde is now trying to convince the Council that it is obvious that such a law could never have been passed, that it has never been the law of the land. He assures us solemnly that we the Government have been going on in this wicked way, for a century or more, that we have not the shadow of a right to do so, that this law has all along been *ultra vires*. I think I may appeal to my Hon'ble friend, Mr. S. N. Banerjea, who told us, that 'Truth' was the direct offspring of 'Time.' Here 100 years have passed. Are not this Council willing to assume that it was a true law and that it is now at all events a fact ? The Courts have been open to my Hon'ble friend and his predecessors in the profession for 100 years; they have never been able yet to get a court to agree with them and say that this law was *ultra vires*; and now he comes solemnly to the Council and says, 'For Heaven's sake let us not go on with it.' I have nothing more to say except that it seems to me that this argument would expose us to ridicule, and that we should only be making fools of ourselves if we went up to Parliament and asked them to give their sanction to this law. They would say quite logically, 'You have had a law like this for 100 years. What is the reason for your coming up now for sanction ?'

"The only other point I want to speak about is the reference to the Defence of the Realm rules. There, again, I did not expect a very learned lawyer to fall into such an apparent error. It is perfectly true that the Defence of the Realm Act says that where anybody is charged with an offence being a British subject he must be tried,—that he has a right to be tried—not by court-martial but by a civil court. I imagine that the Indian provisions which the

Hon'ble Member was referring to were those containing the powers which we have in India of restricting a person's movements, of internment as Mr. Khaparde calls it. But look at the Regulations under No. 14 of the Defence of the Realm Regulations.

"Where a person is suspected of acting or being about to act in a manner prejudicial to the public safety or the Defence of the Realm (which is the same provision as we have in India), he may be ordered to reside in a particular place and, in fact, to do everything which Mr. Khaparde compendiously calls internment. The rules go on to say that if he breaks the order of internment he commits an offence and then he will be tried by a special court. That is the same under our Defence of India Act. We make it an offence to break any of those regulations and then we try him. So it is really no good saying that the Defence of India Act is quite different from the Defence of the Realm Act when it does exactly the same thing. My recollection is—I have really not had an opportunity of looking at it—that the case to which the Hon'ble Mr. Jinnah referred earlier this afternoon, speaking of Lord Shaw's judgment, was one where the House of Lords affirmed the power of internment. My Hon'ble friend, I think

The Hon'ble Mr. M. A. Jinnah:—"No. That was with regard to the distinction on the ground of British subject and a subject who is a naturalised British subject of foreign origin. That is the distinction you find in the Act."

The Hon'ble Sir George Lowndes:—"Again, I am only speaking from recollection. I read the case some time ago, but I think I can vouch for my recollection, that the person who was the subject of the decision there was a naturalised British subject."

The Hon'ble Mr. M. A. Jinnah:—"Quite so, naturalised British subject. But under the Defence of the Realm Act special provision is made for a naturalised British subject of foreign origin."

The Hon'ble Sir George Lowndes:—"He was a naturalised British subject, and claimed that the Defence of the Realm Act was *ultra vires* because they attempted to intern him without a trial. Lastly, I must point out that my Hon'ble friend Mr. Jinnah has quoted a minority judgment, that judgment of Lord Shaw was not accepted by the House of Lords. This was an argument that I should have liked to controvert at the time, but it did not appear to me to be of any materiality as the House of Lords upheld the internment.

"The only judgment which my Hon'ble friend was able to quote was a minority and a dissenting judgment. I can only say that that is not the way we usually proceed in such matters in a court of law

The Hon'ble Mr. M. A. Jinnah:—"May I rise to a point of order. The Hon'ble the Law Member is misrepresenting me. I have quoted no judgment. I have simply given a case which he wanted."

The Hon'ble Sir George Lowndes:—"I thought the Hon'ble Member did. My ears may have deceived me, but I cannot have dreamt this. However, I do not wish to prolong the discussion. There only remains the point raised by Mr. Khaparde, and I say again that the Moment case has nothing whatever to do with the point so far as the argument is based on section 65 (2) of the Government of India Act. In an earlier debate I dwelt at length on his contention and there is no need to go over it again. There have been a hundred years for the contention to be raised, but nothing has come of it."

6-59 P.M. **The Hon'ble Mr. G. S. Khaparde**:—"My Lord, I do not like to come into conflict with an eminent jurist, but as regards the Moment case the point was that you cannot deprive a man of his liberty to sue the Secretary of State, and therefore I submit that the analogy holds.

"The next point was that this Act is 100 years old and has never been taken to the House of Lords. As regards that I do not know if the people who came in from foreign States ever took advantage of their rights as British subjects. But so far as I am concerned I never heard of the Act till the Nathu Brothers were shut up. The question was asked how was it that in all these hundred years the case was not taken to the House of Lords? That may have happened because the people affected by it had not the means to carry up the matter to the Highest Tribunal of the Empire. Mr. Moment could only do so by collecting subscriptions.

"Then as regards the Irish Coercion Acts, the Crimes Act, etc., I looked through them and can find no analogy for the present Bill. In each case tribunals were constituted and orders for internment were passed by an order of the Resident Magistrate. I do not know what is meant by a Resident Magistrate in Ireland, but at any rate in each case the person had to go before him. This provision is a very exceptional one and has been introduced for the first time. The Defence of India Act was a war measure, and of course in time of war we expect to be subjected to many things which would not ordinarily occur, but I submit that there is no analogy between this and the English Acts, and that the provision is *ultra vires*.

The motion was put and the Council divided by a show of hands.

The amendment was therefore negatived.

7-4 P.M. **The Hon'ble Mr. V. J. Patel**:—"My Lord, I beg to withdraw my amendment, which runs as follows:—

> 'That for the words 'taken into consideration' at the end of the motion for taking the Report of the Select Committee into consideration, the following be substituted:—
>
> 'deferred till the question regarding the competence of this Council is authoritatively settled by His Majesty's Government to whom necessary reference should be made in that behalf''.".

The amendment was by leave withdrawn.

His Excellency the President:—"In adjourning the Council may I congratulate it on the admirable temper in which this very controversial subject has been debated this afternoon."

SGPI, Delhi—325 LD—3-4-19—80

Extract from the Proceedings of the Indian Legislative Council assembled under the provisions of the Government of India Act, 1915. (5 & 6 Geo. V, Ch. 61.)

The Council met at the Council Chamber, Imperial Secretariat, Delhi, on Thursday, the 13th March, 1919.

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CRIMINAL LAW (EMERGENCY POWERS) BILL—*contd.*

His Excellency the President:—"Before we proceed with the discussion of the further amendments standing in the paper, I should like to explain to the Council the procedure I intend to adopt. The Bill will be considered clause by clause, and when the amendments, if any, in respect of a clause have been disposed of, the question will be put that that clause or that clause as amended, as the case may be, stand part of the Bill. I see there are no amendments on the paper relating to the preamble. The question therefore is that the Preamble of the Bill as amended by the Select Committee stand part of the Bill." 11 A.M.

The motion was put and agreed to.

The Hon'ble Sir William Vincent:—"My Lord, I make a formal motion that clause 1 stand part of the Bill?"

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I beg to propose the following amendment:—

That after sub-clause (2) of clause 1 the following sub-clause be inserted:—

'(2*a*) This Act shall not come into force till six months will have elapsed after the formation of new Legislative Councils in accordance with the Reform Scheme. Provided, however, that if anarchical and revolutionary crimes become prevalent in any part of British India before that, the Governor General may, with the consent of the Legislative Council, make a declaration to that effect in the Gazette of India and introduce any provisions of this Act or, if necessary, the whole Act in such part.'

"I do not wish to make a long speech in moving this amendment. It is clear from the wording of my amendment, whether the Council will accept it or not, what my object is. We wish to see the effect of the reforms before this Bill is put into operation. What I say is, that even if you pass this Bill, do not bring it into force in any part of British India before we have had some experience of the reforms. Should however in the meantime in any part of the country you see there is a recrudescence of these crimes, then you can introduce the provisions of this Act. Of course, I wish to have one proviso added, that is to say, that the Act should be brought into operation with the consent of this Council. It is rather unusual to consult the Legislative Council before taking action of this kind. My argument is this. This law is an extremely extraordinary one and you are empowering by this measure the executive with judicial powers. Therefore, in such a case I think, there will be no harm if you depart from the usual practice and consult the Council in this matter. With these words, my Lord, I place the amendment before the Council."

The Hon'ble Sir William Vincent:—"My Lord, I am afraid that for the reasons given yesterday at some length in connection with Mr. Banerjea's amendment, the present amendment cannot be accepted. We do not know when the reforms will come into operation. We all hope that they will not be delayed, at any rate, for very long, but we cannot possibly consent to adjourn this Bill or postpone the date on which it shall come into operation for an indefinite period of that kind. It is true that the Hon'ble Member

has inserted a proviso which in his judgment would meet an emergency, but I would point out to the Council that the wording of that proviso does not correspond at all with the wording of the Preamble to Part II. If Hon'ble Members have the Bill before them and refer to the Preamble to Part II they will see that this is so. I would also point out that that proviso omits all reference to Part IV of the Bill upon which the Government lay considerable importance. I suggest that this amendment is really tantamount to double legislation by this Council. If the measure was of such a nature that it could be deferred until the Reform Scheme came into operation, we should not have brought it forward at this moment.

"The procedure which the Hon'ble Member proposes would also involve frequent reference on details to this Council. I refrain however for the present from dealing with the constitutional position of this Council as it is raised more definitely in a later amendment. I regret that I must oppose the amendment brought forward by Mr. Chanda."

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I have nothing more to add to what I have already said."

The motion was put and negatived.

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I beg to move that in clause 1 (*3*) for the words 'three years' the words 'one year' and for the words 'of the termination of the present war' the words 'this Act comes into force' be substituted.

"I do not think it is necessary to make a speech in support of this amendment. If an emergent measure is required, I think it would be enough if you keep it in force for one year from the time it comes into force instead of three years as stated in the Bill. With these words I place this amendment before the Council."

The Hon'ble Sir William Vincent:—"My Lord, there are two other Hon'ble Members who have moved similar amendments. May I suggest that they should speak if they wish to move them before I speak?"

The Hon'ble Mr. V. J. Patel:—"I move, your Excellency, my amendment. I beg to move that in clause 1 (*3*) . .

His Excellency the President:—"It will be convenient, Mr. Patel, if you move your amendment now, but if you like to speak it will practically cover the same ground. Do you wish to speak?"

The Hon'ble Mr. V. J. Patel:—"I shall speak later."

The Hon'ble Rai Bahadur B. D. Shukul:—"My Lord, I have nothing more to add to what the Hon'ble Mr. Chanda has said."

The Hon'ble Sir William Vincent:—"The effect of this amendment, my Lord, would be to leave the Government powerless to deal with this revolutionary crime for an indefinite period, and to give them powers for one year only. If we consented to wait for three years, we should be practically admitting that there was no urgent necessity for this legislation. I have already explained to the Council the reason why it is urgent. The Government have already reduced the period for which the Bill is to be in force to the minimum which they think possible, and there are indeed many who think that three years is an inadequate period. Government cannot accept an amendment to reduce the period further or to postpone indefinitely the date on which the Bill will come into force. I really myself am not quite sure as to the meaning of the first part of the Hon'ble Member's amendment, as he says for the words 'three years' the words 'one year' and for the words 'termination of the present war' the words 'this Act comes into force' be substituted. To interpret that I had to refer again to the previous amendment which had just been put to the Council, and I concluded that the Hon'ble Member meant that the Bill was not to come into force until six months had lapsed after the formation of the new Legislative Council."

The Hon'ble Pandit Madan Mohan Malaviya:—'My Lord, there are two points involved in this amendment. The first is that one year should be substituted for three years. With regard to this I would say that the difficulty the Hon'ble the Home Member has urged will be met if the amendment is accepted. If a real necessity is felt by Government after one year to renew this Act, they will not find it difficult to renew it. But three years seems to be a long period in the view of those who have urged this amendment in the Council. The substitution of one year for three years does not mean that at the end of one year the Government will be powerless and will not have sufficient weapons in their armoury to deal with revolutionary or anarchical crime. But if the existing weapons should prove insufficient, it will be open to the Government to bring up a short continuing measure before the Legislative Council and pass it, as has been done on other occasions at one sitting of the Council, because the Government will have a majority even when the Reformed Councils come into existence, so far as one can see.

"My Lord, there is the other part of the amendment, namely, that for the words 'of the termination of the present war' the words 'this Act comes into force' be substituted. The Hon'ble the Law Member himself observed, in speaking on the previous amendment of Mr. Chanda, that the date of the termination of the present war is an indefinite and yet undefined period. Well, for that very reason the amendment now before the Council should commend itself even to him. We do not know the date from which the termination of the war will be determined. Instead of using that expression, if it is said 'from the date on which this Act comes into force', we shall know for what period the Act is passed."

The Hon'ble Sir William Vincent:—"May I put a question to the Hon'ble Member? I do not quite understand the date to which the Hon'ble Mr. Chanda refers when he speaks of the Act coming into force unless it is specially laid down in the Act; it is a matter of interpretation and I read this amendment with the previous one."

The Hon'ble Pandit Madan Mohan Malaviya:—"I understood the words to mean the date on which the Bill would be passed, or rather the date on which it would receive the assent of the Governor General. That is how I understood it. The expression 'from the date of the termination of the present war' is at present indefinite and it will prolong, in fact, the duration of the Act by at least several months, whereas if the period is to run from the date on which the Act becomes law, the period will be what the proposal of the Government evidently on the face of it would mean—three years from the date on which it becomes law."

The Hon'ble Sir George Lowndes:—"My Lord, there is very little to say in answer to the Hon'ble Pandit except that the date of the termination of the war, though at this moment an indeterminate date will be fixed by a Bill which has already come before this Council in accordance with the declaration of the date of the termination of the war by His Majesty's Government. There will therefore be no indeterminate date from which the Bill will come into force. My Hon'ble friend Sir William Vincent has said that he wishes to have this Act in force when the Defence of India Act comes to an end, and there is no intention to use this Act till after the termination of the war. As to the period for which the Government have, after mature consideration, decided that the Act must be in force, we think that a period of three years from the termination of the war is the shortest period for which it is any use having legislation at all."

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, as it will appear from the remarks of my Hon'ble friend Pandit Malaviya which I accept, the one year would be one year from the date the Bill was passed." 11-14 A.M.

The amendment was put and negatived.

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The Hon'ble Mr. V. J. Patel :—"My Lord, I beg to move that in clause 1(*3*) for the words 'three years' the words 'one year' and for the words 'termination of the present war' the words 'passing of the Reform Bill in Parliament' be substituted. The clause, as it is proposed to be amended, will read thus :—It shall continue in force for one year from the passing of the Reform Bill in Parliament. Now, my Lord, it has been suggested that one year is rather a short period. I put it to the Council to consider whether there is really any sense in making it three years. I consider three years an arbitrary period, and so also is one year. We feel that the period of three years is long and that when the period of one year is over, you can always come to this Legislative Council and as my friend the Panditji observed, you can get through an amending Bill in one day and have the period extended if the necessities of the case require it. Another point that I wish to make is that the Act should be in force from the date of the passing of the Reform Bill in Parliament. At present, as your Excellency knows, there is no urgency about it. Let the Act be passed if you want to pass it, but let it come into force after the passing of the Reform Bill in Parliament.

"With these few words, I move my amendment."

The Hon'ble Sir William Vincent :—"My Lord, the Hon'ble Member proposes that the Bill should not come into force until after the passing of the Reform Bill in Parliament, and, as I understand, he advocates this course on the ground that the measure is not an urgent one. I have spoken at length on this subject at two successive meetings of this Council endeavouring to make it clear that, in the opinion of Government, the measure was of the greatest urgency and yet the Hon'ble Member asks me to postpone the operation of the Act until after the new Councils will have come into being, when, according to the generally expressed opinion of this Council, the need for such legislation will really be less. That, I think, is not consistent with the arguments previously put forward. He further asks that the Bill should then remain in force for one year only. We fixed the period of three years as the minimum period within which we could hope for this movement to settle down. We are satisfied that a period of one year is not sufficient, and we do not think that it is desirable to renew a discussion of the character of the present one every year in this Council. The debates on the present Bill will indicate how difficult it would be really in practice to follow the course advocated by the Hon'ble Member of passing a measure in one day. For these reasons I must oppose the amendment."

The Hon'ble Mr. V. J. Patel :—"I have nothing more to add."

The amendment was put and negatived.

The Hon'ble Rai Bahadur B. D. Shukul * :—"I have nothing more to add to what has already been said by the Hon'ble Mr. Chanda and the Hon'ble Panditji. I think, too, that three years is rather a long period and that one year is quite sufficient. If you have to extend it then, it will come before the Council and there will be no difficulty. That is all."

* Moving his amendment that in clause 1(*3*) for the words "three years" the words "one year" be substituted.

The Hon'ble Sir William Vincent :—"I have nothing to add except to make one remark which I ought really to have made before and which, with your Excellency's permission, I shall make now. It was said we ought to employ this Act only after the conclusion of peace. I am quite prepared to give an assurance to this Council that we will issue no notification under it until peace is declared."

The Hon'ble Rai Bahadur B. D. Shukul :—"I have nothing more to add, my Lord."

The amendment was put and negatived.

The motion that clause 1 of the Bill, as amended by the Select Committee, stand part of the Bill was put and agreed to.

The Hon'ble Sir William Vincent :—"My Lord, I move that clause 2, as amended by the Select Committee, stand part of the Bill."

The Hon'ble Rao Bahadur B. N. Sarma :—"Your Excellency, I beg to move that in clause 2 (*1*) the following definition be inserted :—

'' Revolutionary movement' means a movement directed to the overthrow by force of His Majesty's established Government in India.'

"I submit, my Lord, that the Council should lay down what in their opinion is meant by a revolutionary movement, and the question is one of extreme importance. I take it that the Government in the framing of this Bill had largely in mind the ideas floating before the Rowlatt Committee when they formulated their proposals. It may be that the expression revolutionary movement is so clear or ought to be so clear to any understanding that there is no need for any accurate definition thereof, but I hope to be able to convince the Government that the matter is not quite so simple, and that the Legislature ought to attempt a definition thereof if it is possible to do so. I have taken it that the Government want to suppress any movement that is intended to bring about a revolution in the country by the overthrow of the established Government by means of force not by means of constitutional agitation, and I thought that the Rowlatt Committee also had a similar intention. Speaking of the movement in Bengal they say at page 15 :—

' Barindra's object in returning to Bengal was, as he subsequently stated, to organise a revolutionary movement with the object of overturning the British Government in India by violent means.'

"I take it, therefore, that the object that is aimed at is the overthrow or overturning of the British Government in India by violent means or by force. The risk of avoiding defining the meaning of revolutionary movement is that we leave to the individual idiosyncracies of the various Provincial Governments or the members in charge of the Government of India at any particular time to understand what is meant by a revolutionary movement. If there is a movement in India which the officers consider to be far too progressive to have any chance of practical realisation in the early future, and that agitation to achieve that ideal would be accompanied or is likely to be accompanied by wrong methods, the Government may straight away say this is a revolutionary movement, on the mere chance of some individuals in the pursuit of a high ideal, which according to the officials may not be capable of immediate realisation, being likely to resort to unlawful methods. I have only to read the proceedings of the Madras Legislative Council on the 24th May, 1917, which are popularly believed were to a certain degree influenced by a circular issued by the Home Department of the Government of India, to convince the members of the Council that the fears that I express here are not altogether of an imaginary character. Questions were put in this Council as to whether a circular was not issued by the Government of India in the Home Department inviting the attention of Provincial Governments to the initiating and propagation of movements such as the Home Rule movement calculated to put ideals in the minds of people, which are of a visionary character and which may be likely to be attended by wrong methods. As I have put it, I have absolutely no objection whatsoever and nobody can have any objection whatsoever to wrong methods, to incorrect methods, to improper methods, to violent methods, being put down with a stern, strong hand at any time whatsoever, but it is the danger that the officials may think that a particular movement may be propagating or preaching a distant ideal which would or may be accompanied by wrong methods on the part of individuals, it is that which I am deprecating. Of course the circular was not placed on the table, but several persons who were supposed to have seen it, or who said that they had seen it, have published statements in the newspapers which, as far as I know, have not been corrected, that the Government of India took alarm at the propagation of these movements, I mean especially the Home Rule movement and His Excellency Lord Pentland, winding up the proceedings of the Legislative Council on the 24th of May, 1917, alluded in specific terms to these distant ideals being a source of trouble and also deprecating the employment of wrong methods.

"In so far as that speech is concerned, with the warning given against the employment of wrong methods I have not a word to say, but I respectfully submit that the rest of it is a warning to Legislatures as well as to the Government of India. Here is what His Lordship said :

'Here and now it is impossible for us to say what reforms in this respect will be proposed for India at the close of the War.'

He was deprecating any agitation during the course of the war to secure reforms for India.

'Whatever they may be, they will fall far short of the proposals to which I have alluded.'

That is the Congress ideals, although later on there was a Press Communiqué saying that exception was not taken to the Congress ideals as such.

'Yet there is no sign of the relaxation of this agitation and the educated classes in India are being led to expect that which will not come and in some cases that which they know will not come. It is obvious that this situation contains elements of misunderstanding, of difficulty and possibly of friction.'

He then goes on :

'For any such difficulties the leaders of this agitation and all who support and sympathise with them will be directly responsible. Against all advice and warning they have initiated and persist in this agitation at a most unsuitable time.'

Then the speech warns against the employment of incorrect methods, but it is the last portion that I want to emphasise :

'And on behalf of my Government I call upon all who hear me or read these words for their support in any action that the Government may be forced to take to discourage these unwise and dangerous methods.'

I will again repeat against that I have no objection.

and the extravagant aims which they are designed to further.'

Therefore, my Lord, any movement, a legitimate movement which the Government of Great Britain has recognised to be a legitimate movement moving towards self-government as rapidly as circumstances permit,—any movement of that character which may be out of harmony with the existing state of things, may be honestly construed by zealous officers as a movement fraught with danger to the country. If you do not define the term 'revolutionary movement' it may mean a movement so far in excess of the present conditions, or so far in advance of the present conditions, as to revolutionise the existing state of things. Thus if we have the present bureaucratic government, where everything is done by the Government, a change of that into self-government will be distinctly revolutionary. Would not a person working for a revolutionary movement of such a character come within the term 'revolutionary' unless the Legislature defines and limits the scope and meaning of the words? It is that object, and that object only, that I have in view in moving this amendment. The words I have chosen may not be happy, and it is for the wisdom of the Legislature to devise any other words if they think that the object I have at heart has to be achieved. But I think the words I have chosen are apt and will serve the purpose which I have in view. I therefore respectfully move that this amendment may be accepted."

11-31 A.M. **The Hon'ble Dr. Tej Bahadur Sapru:**—"My Lord, I beg to support the amendment that has just been put before the Council by my friend the Hon'ble Mr. Sarma. It seems to me that it is consistent with the avowed object of this Bill and with the declared policy of Government which is responsible for this measure. The expression 'revolutionary movement' is not an expression of law. It is a phrase of political language, and it seems to me, my Lord, that it would really be extremely useful if you could give some sort of a definition for the guidance of Courts of law. My Hon'ble friend Mr. Sarma has pointed out the dangers lurking in the Bill if you do not give any positive definition of an expression like that. I do not suggest for a moment that it will be deliberately abused; but that it may be abused I do not think anyone can say is an impossibility. Therefore, in order to enable the Courts to come to correct conclusions, and also to assure

the public mind that the proper test is being applied by the Executive Government in taking action under a measure like this, it seems to me that it is very necessary that you should give some sort of an explanation. The Hon'ble Mr. Sarma's amendment seeks to define the expression here as a movement which is directed to the overthrow by force of His Majesty's established Government in India. My Lord, I think that it brings out very well the meaning of the expression, so far as it is capable of being defined in connection with this Bill, and it is consistent with the Government's policy. I therefore very strongly support this measure."

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I wish to support this motion. As a matter of fact I was thinking of sending notice of a similar amendment, but I found that my list was already too long and I therefore refrained from doing so. When I found my friend the Hon'ble Mr. Sarma contemplated putting down an amendment to this effect, I encouraged him. He asked me if the Calcutta High Court anywhere defined revolutionary movement. I said I do not think it is possible for a High Court to frame a definition, and I think it is very necessary that this should be done here, so that there may be no difficulty hereafter in construing the Act."

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, I support the amendment. I would draw attention to the phraseology that has been used in the Preamble of the Bill where the object of the Bill is defined to be dealing with 'anarchical and revolutionary movements.' The Act is called the 'Anarchical and Revolutionary Crimes Act,' which is more definite than 'movements.' Then the word 'movement' occurs in section 3 of the Bill—'If the Governor General in Council is satisfied that, in the whole or any part of British India, anarchical or revolutionary movements are being promoted . . .' In view, therefore, of what my friends the Hon'ble Mr. Sarma and the Hon'ble Dr. Sapru have said, it seems very desirable that the expression 'revolutionary movements' should be made more definite and clear. The use of the word 'Crimes' in the title of the Act suggests a solution which may be acceptable to the Government. If you substitute the word 'crimes' in place of the word 'movements' the object will be gained.

The Hon'ble Sir George Lowndes:—"My Lord, I rise to a point of order. We have no amendment to that effect. The Hon'ble Member is not supporting the amendment before the Council, but moving an entirely different one."

The Hon'ble Pandit Madan Mohan Malaviya:—"Without moving an amendment, I am perfectly within my right to support, with arguments, any amendment that is before the Council. That is what I am doing. I know as well as the Hon'ble the Law Member that I have not given notice of any such amendment. I draw attention to the language used in the Bill in support of the argument which I am placing before Council in support of the amendment of my friend the Hon'ble Mr. Sarma; and I say if the word 'crimes' were used instead of 'movements,' that would have been consistent with section 1 of the Act where the title of the Act is defined. As this has not been done, it becomes very necessary that in order to prevent any such conflict of opinion arising as is apprehended, 'revolutionary movement' should be defined. My Lord, as my friends the Hon'ble Dr. Sapru and the Hon'ble Mr. Sarma have pointed out, revolutionary movements may be of a perfectly innocuous character, absolutely unconnected with any crime; and nobody knows better than my English friends, whose literature and history have frequently had to deal with revolutionary movements of different characters, that it would take people somewhat by surprise if they were asked to take it that revolutionary movements meant only criminal movements. Unless the phrase is defined, it is liable to be misconstrued, and there is danger of that misconstruction leading some petulant Governor to take action under the Act which will not be justifiable and which will not commend itself to any sensible man. We have in the history of the past few years very unhappy experiences of how expressions used for one purpose have been

misconstrued and used for other purposes. The language of the Defence of India Act Rules has been so misconstrued in the opinion of a number of people. Therefore I submit, my Lord, that there should be no room left for doubt and dispute, and for an apprehension in the public mind that at a time when political agitation may assume virility and vigour some petulant Governor might feel nervous and might take action under the provisions of this Act.

"That is not what your Excellency intends should be done; that is not what I take it your Excellency's Government intends should be done. Therefore, the request is absolutely reasonable that the matter should be placed beyond doubt by defining revolutionary movement as has been suggested by the Hon'ble Mr. Sarma."

The Hon'ble Sir George Lowndes:—"My Lord, one is almost tired of reiterating both in this Council and outside it that this Bill is not aimed at constitutional agitation of any sort or kind I hope that this may be the last time when it may be necessary to reiterate that statement in the discussions on the Bill. Then, with regard to this amendment and what has been said on it. These words were inserted in the Bill at the express and unanimous request of all the non-official Members forming part of the Select Committee, of which my Hon'ble friend the Pandit was one.

The Hon'ble Pandit Madan Mohan Malaviya:—"May I rise, my Lord, to a point of order. I am not sure that my friend is right in saying what he has said. We wanted that the scope of the Bill should be confined to revolutionary and anarchical crime; we understood that that would be done; I am not sure that we wanted the word 'movements' to be put in there. When the modified clause was put in, there was no discussion upon it."

The Hon'ble Sir George Lowndes:—"I am only dealing with the question of the word 'revolutionary.' The Hon'ble Pandit appears unable to understand that there is no amendment with regard to the word 'movement.' It might have been more reasonable if he had asked for a definition of 'movement' than for a definition of 'revolutionary'; but we have no amendment to that effect. These words 'revolutionary' and 'anarchical' were, I repeat, put in at the request of the non-official Members of the Committee, of whom my Hon'ble friend the Pandit was one, and he did not suggest in the Committee, nor did any Member of the Committee suggest that it was necessary to define the word 'revolutionary'. And for very good reason. It was quite recognised in the Committee as has been stated by my friend, Dr. Sapru, that 'revolutionary' is not a legal term at all. It is not an expression of law; it is not a technical expression in any way, nor do we use it or seek to use it in this Bill in any but its popular and dictionary sense. We do not insert definitions of a word in a Bill under any circumstances if it is merely the popular sense in which it is used; we leave that to be ascertained from the dictionary. My Hon'ble friend, Mr. Sarma, appears to me to be on the horns of a dilemma. Either he uses the word in the ordinary dictionary meaning in which case we may leave it to be looked up in the dictionary, or he uses it in some special sense which was not the amendment accepted by Government in Select Committee. It was definitely accepted in the Select Committee by Government at the request of Hon'ble Members in the ordinary dictionary meaning of the word, and it is that meaning on which we rely now. There is no good attempting to attach volume after volume of Murray's dictionary to a Bill like this; it will not help any one. When a Judge or any one else—even a 'petulant Governor'—wants to know what the word 'revolutionary' means, he can go to the dictionary and look it up there, and then possibly the petulant Governor may fall into an error, because the dictionary would tell him that it either means an attempt to overthrow the established government of a country or the motion of a celestial body in moving round a particular orbit. If the Council really thinks that there is any danger of even a petulant Governor being led into error by those two variations in the dictionary, there may be something to be said for the amendment. But in the circumstances, I regret Government must oppose this amendment."

The Hon'ble Pandit Madan Mohan Malaviya:—"I would ask the Hon'ble Member if he has heard of the revolution in Japan in 1868."

The Hon'ble Sir George Lowndes:—"I am afraid if my Hon'ble friend asks me, I must say I have not heard it called that."

The Hon'ble Mr. Srinivasa Sastri:—"Your Excellency, I had the honour of sitting on the Select Committee, and I was one of those who recommended the adoption of the word 'revolutionary'. I was not unaware at the time of the meaning of the word in the ordinary sense. But it is now pointed out by the Hon'ble Mr. Sarma that it might include peaceful revolutions. My Hon'ble friend, Pandit Madan Mohan Malaviya, is not perhaps quite right to call what took place in Japan in 1868 a revolution; it is often called the restoration. But it had the character of a revolution in one sense, and people, if we are to accept the ordinary dictionary sense as the Hon'ble the Law Member advises us to do, would be found frequently using the word 'revolutionary' in innocent ways, absolutely unsuggestive of anything criminal. For example, in recent political debates in India, the Montagu-Chelmsford report has been often described as revolutionary; the Congress-League scheme was described by even a larger number of people as revolutionary. Many opinions that we express here without suggestion of the Penal Code at all are described as revolutionary. Talk of the republic in England would certainly be revolutionary in the ordinary dictionary sense, but I have not heard yet of any people who talked of republican institutions in England being marched off to the jail. Nor have I heard still, although perhaps a very strict censorship is established over the cable, of the recent Sinn Fein movement having been yet caught, held up by the police, because it has not done anything more than peacefully sitting down.

The Hon'ble Sir George Lowndes:—"My Lord, I think the Hon'ble Member ought to know that the Sinn Fein movement has not only been found to be revolutionary but, I believe, a large number, I think over a 100, of Sinn Feiners, are at this moment interned in Ireland or in England."

The Hon'ble Mr. Srinivasa Sastri:—"On account of the recent talk of Sinn Fein revolution?"

The Hon'ble Sir George Lowndes:—"Yes."

The Hon'ble Mr. Srinivasa Sastri:—"That is certainly news. In these ways, omitting the last point about Sinn Fein, it seems to me that there is a danger, which, I am very sorry to say I did not think of at the time I sat in Select Committee, of the word 'revolutionary' being taken to apply even to suggestions of radical political reform which has no basis whatever in or connected with anything anarchical. I suppose a strict lawyer would say that when we use the word 'revolutionary' alongside of the word 'anarchical,' it would be impossible for such an interpretation to be put upon it. But, occasionally, people may use the word in that sense and I see nothing harmful in defining the word 'revolutionary,' so that it might apply only to those movements which are sought to be carried out by the application of force. Supposing, for example, it were possible by a mere majority opinion almost universal, overwhelming us, to establish a very different form of Government to that which is now established, it might be revolutionary in its character, certainly will be according to the dictionary sense, but it need not be necessarily such as to call for the application of any criminal law. It is to avoid that, I think, that Mr. Sarma desires to define the expression 'revolutionary movement' as that which is sought to be carried out by the application of force. I see no particular harm in doing it. On the contrary, I see some advantage, and therefore, although I sat in the Select Committee and was responsible for the use of this word without asking for a definition of it, I think now I might change my mind, which is not legally trained, and support the amendment moved by Mr. Sarma."

11-48 A.M. **The Hon'ble Mr. Surendra Nath Banerjea:**—My Lord, I desire to associate my self with the remarks that have fallen from the Hon'ble Mr. Sastri. I was one of those who asked for the insertion of the term 'revolutionary and anarchical'. The Hon'ble Member in charge of the Bill at once accepted my request, and we have to record our acknowledgments for this and many other concessions of the same kind. The point did not arise at the time, it occurred to nobody that this word 'revolutionary' movement might be used in the sense in which it has been suggested and inasmuch as a difficulty has arisen, I think it ought to be met. There is no harm in accepting the amendment of the Hon'ble Mr. Sarma in inserting a definition, as the matter is now under consideration. It does not in the least interfere with the scope or character of the Bill, but makes the object more clear, more transparent. I trust the Hon'ble the Home Member will see his way to accept the amendment of my Hon'ble friend."

The Hon'ble Khan Bahadur Mian Muhammad Shafi:—"My Lord, I associate myself with what has fallen from the lips of the Hon'ble Mr. Sastri and the Hon'ble Mr. Banerjea. But there are one or two points to which I would like to draw the attention of the Hon'ble the Law Member. It is perfectly true that the Government in this Council has declared in express terms that this Bill is intended to put down anarchical and revolutionary crimes, and that intention has been embodied in certain parts of the Bill. The Hon'ble the Law Member, however, is, I am sure, perfectly aware of the ruling which has been given, I believe, also by their Lordships of the Privy Council, but most certainly by the Indian High Courts, that a declaration by the Hon'ble Member in charge of a Bill or speeches delivered in the Legislative Council during the debate on the Bill are utterly irrelevant to the construing of the Statute when it comes before a court of law. The advantages of making the language absolutely clear and placing the real intention beyond all possibility of dispute are obvious. We know full well that expressions even clearer than these have been differently construed by different High Courts. That being so I also appeal to the Hon'ble the Home Member to accept the amendment. After all it is calculated to place the intentions of the Government beyond all possible doubt."

The Hon'ble Mr. M. A. Jinnah:—"My Lord, as my Hon'ble friend Mr. Shafi has said just now, no amount of speeches on behalf of the Hon'ble Member in charge of the Bill will avail for one single moment when we come to a court of law to construe the Statute. The Hon'ble the Law Member showed a great deal of annoyance on this point and said: 'We have no desire to interfere with constitutional movements.' There is no need for indignation; we know that the Government have said that over and over again. There is no need for repeating it. We know that you say you do not wish to interfere with political movements. But the Bill is now before the Council and we are responsible for this Bill which is going to become law, and therefore, my Lord, we cannot take too much care in considering every single clause in this Bill before it leaves the Council. Then the Hon'ble the Law Member says that in the Select Committee Non-official Members on the one side and the Government on the other side have agreed to this. But if you have agreed to this, is not this Council or any Member entitled to point out something new and say 'although you have agreed to a particular phraseology, yet there is a flaw in it?' Is this Council merely a machine? Because in the Select Committee the Government, on the one side and those who were appointed Members of the Select Committee have agreed to a certain clause, is it not open to us to point out that there is some flaw? Is this the answer?

The Hon'ble Sir George Lowndes:—"I think my Hon'ble friend has misunderstood me. I did not mean to suggest that. In the Select Committee we accepted the dictionary sense of the word. It was a compromise on this basis and nothing more."

The Hon'ble Mr. M. A. Jinnah:—"That is what I object to; this is not a question of a compromise; this is going to become a part of the law of this country; it is not a question of compromise. What you have to do is to make your intention clear. Is this clause right or is it not? That is the question that the Council has got to consider. Some may have had the privilege of being on the Select Committee, every member of this Council cannot be, but we are entitled to say 'here is a flaw and we press on you that that should be put right.' I attach no importance to your compromise. I do not wish to add a single word to the reasons that have been already advanced in support of the amendment. I hope the Government will see that there is no answer to this point."

The Hon'ble Sir George Lowndes:—"The argument has been advanced by the Hon'ble Mr. Shafi and the Hon'ble Mr. Jinnah that statements made in this Council are not binding on the Courts. I agree. But can they point out to me any clause in this Bill under which the words 'revolutionary crime" will come before a Court?"

The Hon'ble Khan Bahadur Mian Muhammad Shafi:—"My Lord, I am prepared to answer that. If the Hon'ble Member will turn to the preamble he will find the following:—'Whereas it is expedient to make provision that the ordinary criminal law should be supplemented and emergency powers should be exerciseable by the Government for the purpose of dealing with anarchical and revolutionary movements.' Then in clause 3 it is said 'If the Governor General in Council is satisfied that in the whole or any part of British India anarchical or revolutionary movements are being promoted.' In several parts the Hon'ble the Law Member will find these words 'revolutionary movements' repeated in various places, and they have a very important bearing on the various sections and the consequences will be such . .

His Excellency the President;—"I think the Hon'ble Member should not make a speech when he is asked a question."

The Hon'ble Rao Bahadur B. N. Sarma:—"My Lord, I have here the 'Concise Oxford Dictionary' and it would be well if we had this point settled, as once the Government has resolved on a particular course of action, it is hard to get it changed."

His Excellency the President:—"I cannot see, Mr. Sarma, that anybody has taken his authority from that book."

The Hon'ble Sir William Vincent:—"My Lord, this is obviously a matter of drafting in which the Government must be guided by the advice of the expert department. Apart from the question of this compromise—there really was no compromise, but a suggestion which we accepted.—Apart from that and on the merits I can see no adequate reason for making any change in the clause as drafted. It is a little surprising that, as we had a number of lawyers on the Select Committee, some member of the Committee did not raise the point then. If this had been done we could have had it further examined. It would be a little more considerate to Government if points of this kind were raised in Select Committee rather than afterwards. I do not want to put it higher than that or suggest that a member of the Committee is precluded from raising the point later. On the general question I submit that to the man in the street the meaning of the word 'revolutionary' is perfectly clear. Moreover, if Hon'ble Members will refer to the Bill they will see that it is throughout used in connection with the term 'anarchical.' I do not think in such circumstances it is capable of any misinterpretation. Further, if I may refer again to the Bill, Hon'ble Members will see that it can only be applied to criminal movements and wherever you get the words 'revolutionary movement' there is immediately afterwards a reference to offences. For instance, if you look at Part I it says: 'If the Governor General in Council is satisfied that in the whole or any part of

British India anarchical or revolutionary movements are being promoted and that scheduled offences in connection with such movements are prevalent.' That indicates sufficiently what the character of the revolutionary movements mentioned in the Bill are if indeed any further explanation were necessary. Part II says: 'If the Governor General in Council is satisfied that anarchical or revolutionary movements which are

The Hon'ble Mr. Surendranath Banerjea :—"There is a disjunctive 'or' between the words 'anarchical' and 'revolutionary'."

The Hon'ble Sir William Vincent :—"I am not speaking of the disjunctive, but I refer to the reference to offences which follows. 'If the Governor General in Council is satisfied that anarchical or revolutionary movements, which are, in his opinion, likely to lead to the commission of scheduled offences are being extensively promoted in the whole or any part of British India,' and so on. In Part III again, the wording used is the same as in Part I. In these circumstances, having regard to the use of the word 'anarchical' and the reference to offences which follows, I cannot see myself that there is any possibility of this word 'revolutionary' being misinterpreted. The only suggestion of actual misinterpretation that I heard was when it was said that the word 'revolutionary' was sometimes used even in criticisms of the Reforms Report or such documents as the Congress and Moslem League Reforms Scheme. My Lord, the word revolution may be loosely used by partisan newspapers, but it does not follow that responsible authorities will so interpret it, or that they will not interpret the language of the Bill with much more care and accuracy.

"The only other matter to which I need refer is one raised by the Hon'ble Mr. Shafi. He said that what was said in Council was of no importance. Courts would have no regard to speeches made here in interpreting the Act. That, I believe, is a perfectly correct statement. I myself should be prepared to accept it at any rate. But what was pointed out, and what I think he did not quite understand was that throughout this Act, there is no question of the Court deciding whether a movement is revolutionary or anarchical. I take the very clauses cited by the Hon'ble Member. (Clause 3.) It begins: 'If the Governor General is satisfied that, in the whole or any part of British India anarchical or revolutionary movements are being promoted, and that scheduled offences in connection with such movements are prevalent to such an extent, he may make a notification

P.M. **The Hon'ble Khan Bahadur Mian Muhammad Shafi :**—"It shall be open to an accused person when he is called upon before the Court to say that the offence which he has committed has nothing to do with any revolutionary movement."

The Hon'ble Sir William Vincent :—"My Lord, I am attempting to read the clause in the Bill from which these words are used, and I submit that from clause 3 it is evident that the authority to decide under that section whether a movement is revolutionary or anarchical is the Governor General in Council and not the Court; the position is the same in regard to all the other sections. I do not think it has ever been suggested—and I hope it will never be suggested—that the Government of India is not bound by authoritative statements made in this Council. I know that whenever we have or are supposed to have diverged at all from any undertaking, Hon'ble Members are ready enough, if I may say so, to accuse us of having done so wrongly. It is only a few minutes ago that I gave an undertaking not to issue a notification bringing this Act into force before the conclusion of the war, and I should like to know whether Hon'ble Members think that that is not an undertaking which is binding upon Government. Part II again begins thus: 'If the Governor General in Council is satisfied that anarchical or revolutionary

movements ' and so on. Here, again, there is no question at all of the Courts. Part III is exactly the same again ' If the Governor General in Council is satisfied.' Therefore, my Lord, the only persons who will decide the meaning of these particular words are the executive authorities. I do not think it can be urged for one moment that the interpretation suggested by the Hon'ble Mr. Sarma can be applied to this word by the Government, and the Courts will not have to interpret it at all."

The Hon'ble Rao Bahadur B. N. Sarma:—" My Lord, I am generally a very great optimist and therefore expend perhaps unnecessary energy and enthusiasm in an unreal debate, but I shall not for the moment lose my optimism but will still try to persuade the Government to think of a possible change if reason be shown in that direction. What are the grounds, your Excellency, upon which the opposition of the Government to my amendment is based ? The grounds are (1) The Select Committee has not suggested it and that these words were more or less adopted in deference to their wishes ; and (2) it is unnecessary to insert any definition. Mark, my Lord, there was not one word said that the adoption of the definition that I have suggested would cripple the Government in any way, would divert legislation from its proper object, or would in any way handicap the objects which the Government have in view. All that has been said is that it is superfluous ; and we give you our word of honour, we do not mean any such thing, and therefore why do you ask for superfluous words to be inserted in this artistically drawn up Bill. I submit, my Lord, even the artistic taste may perhaps be sacrificed a little to satisfy, rather to remove, the fears entertained by so many Hon'ble Members inside the Council and by many people outside this Council. Let that alone. But are we really correct in assuming that the definition of the word ' revolution ' that has been suggested as being a dictionary definition is a correct one, or that it is the only meaning ? I find that even Murray gives the meanings of the word ' revolution ' as ' alteration,' ' change,' ' mutation,' ' an instance of a great change or alteration in affairs or in some particular thing '. Of course, no doubt he follows it by saying ' a plot to overthrow an established Government in any country or State by those who are previously subject to a forcible substitution of a new rule or form of Government.' I find above that ' an instance of a great change or alteration in affairs or some particular thing ". That is, a revolutionary movement may mean under the definition given in Murray's dictionary, a movement directed to bring about a great change or alteration in affairs or in some particular thing. We have at present only 6 or 7 per cent. of officers in the military services. If we ask for 50 or 60 per cent. it is a great, violent change having very important effects ; therefore it is a revolutionary movement. So in almost every department any change of a very drastic character would be a revolutionary change, and any movement directed towards that change, towards obtaining that change, would be a revolutionary movement even according to my reading of Murray's Dictionary. It may be that my poor intellect cannot quite grasp what an English dictionary meant for its readers to grasp, but there is that meaning.

" If it is capable of that meaning, as it may be, that dictionary definition ought not to be employed too long and too largely for the purpose of saying no change shall be adopted. The attention of the Council has already been invited to the fact that in section 20 and various other sections the words ' revolutionary movement ' are employed disjunctively, distinctly from anarchical movements. So a movement may be strictly constitutional, but if it is revolutionary in the sense I have suggested, it is open to the Governor General in Council to proclaim it as coming within that definition. I submit, my Lord, especially as the aid of judicial courts has been denied to us, there can be no harm in accepting the Government at their own word and saying ' put in that definition which would give us an assurance that it is what you mean." There can be no harm in that. I therefore hope that the Government will not be annoyed by our putting forward amendments intended to bring out the sense clearly in the way in which they ought to, although perhaps it may be unnecessary to do so. This is a matter of very great importance and umbrage

can be taken under the vague use of such terms for doing things which perhaps the authors of this Bill do not contemplate."

The motion was put and the Council divided as follows :—

Ayes—18.

The Hon'ble Mr. S. N. Banerjea.
Raja of Mahmudabad.
Dr. T. B. Sapru.
" Pandit Madan Mohan Malaviya.
" Mr. S. Sastri.
Mr. R. Ayyangar.
Mr. B. N. Sarma.
Mir Asad Ali, Khan Bahadur.
Sir Dinshaw Wacha.
Mr. V. J. Patel.
Mr. M. A. Jinnah.
Sir Fazulbhoy Currimbhoy.
Maharaja Sir M. C. Nandi.
Khan Bahadur Mian Muhammad Shafi.
Sardar Sundar Singh.
Mr. G. S. Khaparde
Rai B. D. Shukul Bahadur.
" Mr. K. K. Chanda.

Noes—33.

His Excellency the Commander-in-Chief.
The Hon'ble Sir Claude Hill.
Sir Sankaran Nair.
Sir George Lowndes.
Sir Thomas Holland.
Sir William Vincent.
" Sir James Meston.
Sir Arthur Anderson.
Sir Verney Lovett.
Mr. H. F. Howard.
Sir James DuBoulay.
Mr. A. H. Ley.
Mr. W. M. Hailey.
Mr. H. Sharp.
Mr. R. A. Mant.
Maj.-Genl. Sir Alfred Bingley.
Sir Godfrey Fell.
Mr. F. C. Rose.
Mr. C. H. Kesteven.
Mr. D. de S. Bray.
" Surg.-Genl. W. R. Edwards.
Mr. G. R. Clarke.
Mr. C. A. Barron.
Mr. P. L. Moore.
Mr. M. N. Hogg.
Mr. T. Emerson.
Mr. E. H. C. Walsh.
Mr. C. A. Kincaid.
Sir John Donald.
Mr. P. J. Fagan.
Mr. T. J. Marten.
Mr. W. J. Reid.
" Mr. W. F. Rice.

The amendment was therefore negatived.

The motion that clause 2 of the Bill, as amended by the Select Committee, stand part of the Bill was put and agreed to.

6 P.M. **The Hon'ble Mr. V. J. Patel**:—"My Lord, the amendment I have the honour to move is that Part I be deleted. The object of this Part is to secure the speedy trial of certain offences. That is the only object for which this particular Part seems to be proposed. Now how is this object to be secured? In the first place, instead of laying the complaint in the ordinary way before the Magistrate, you have a provision to lay it before a Chief Justice. In the second place, you have the special tribunal to try the case. Thirdly, there is to be no jury in such cases and fourthly, there is to be no appeal This is how it is proposed to bring about a speedy trial of certain offences. In ordinary trials, as we understand them, we have in the first place the police investigation, then the inquiry before a Magistrate, thirdly, the trial before a Court of Sessions, and, fourthly, the appeal to the High Court. This, it is

alleged, takes a good deal of time, and as it is necessary that in certain cases there should be a speedy trial, this Part is proposed to be introduced. Well, here, the authors of the Bill seem to have lost sight of the powers Government already possess. Besides the ordinary procedure, they have got the Criminal Law Amendment Act, 1908. And what are its provisions? You have in the Criminal Law Amendment Act already a provision for a special tribunal consisting of three judges. I invite the attention of this Council to section 11 of the Indian Criminal Law Amendment Act (XIV of 1908), which says:—

'All persons sent for trial to the High Court under this Act, shall be tried by a special bench of the court composed of three judges.'

The trial before the Sessions Court is altogether dispensed with, and such trial is to take place before the special tribunal consisting of three judges of the High Court. Then the section proceeds further and says:—

'No trial before the special bench shall be by jury.'

So that you have another provision, as you have in this Bill, namely, that such trials shall be by the special bench only without the assistance of a jury. So, as I say, the only difference that I can find, reading the provisions of the Criminal Law Amendment Act of 1908 and the provisions of this Bill, is that a procedure for commitment proceedings is retained under the Criminal Law Amendment Act, while there are no commitment proceedings under the provisions of this Bill. With regard to these commitment proceedings, however, I beg to draw the attention of the Council to section 4 of the Criminal Law Amendment Act, which lays down that 'the accused shall not be present during an inquiry under section 3, sub-section (1), unless the Magistrate so directs, nor shall he be represented by a pleader during such inquiry, nor shall any person have any right of access to the court of the Magistrate while he is holding such inquiry."

"So that the commitment proceedings contemplated by the Criminal Law Amendment Act are merely *ex parte* proceedings occupying as little time as possible. Instead of laying the information before the Chief Justice, as proposed in the present Bill, you have only to lay it before a Magistrate. The Magistrate then examines witnesses for the prosecution and at once commits the case direct to the High Court, and the trial takes place before the Special Bench consisting of three judges without any jury. Then again, there is no provision for appeal in the Criminal Law Amendment Act. So that, all the conditions, namely, the absence of a jury, the absence of an appeal, and the trial by a special tribunal, are satisfied, excepting, as I say, the provisions regarding commitment proceedings, which are under the Criminal Law Amendment Act merely *ex parte*.

"You will ask me why then did the Rowlatt Committee recommend this measure? My reading of the Report of the Rowlatt Committee gives me the impression that the Rowlatt Committee seems to have lost sight of the fact that the commitment proceedings under the Criminal Law Amendment Act are *ex parte*. I will invite the attention of the Council to paragraph 181 on page 145 of the Rowlatt Committee's Report. First, they talk of juries:

'We think it necessary to exclude juries and assessors mainly because of the terrorism to which they are liable. But terrorism apart, we do not think they can be relied upon in this class of case. They are too much inclined to be affected by public discussion. We could give instances which have come before us, where we think there have been miscarriages of justice owing to the causes above mentioned. We may further point out that the trial of such cases without jury or assessors was introduced by the Indian Criminal Law Amendment Act, 1908.'

"Then they go on and say—

'As regards the procedure and the absence of right of appeal, we think it essential that the delay involved in commitment proceedings and appeal be avoided. It is of the utmost importance that punishment or acquittal should be speedy both in order to secure the moral effect which punishment should produce and also to prevent the prolongation of the excitement which the proceedings may set up. Furthermore, the delays involved by commitment

proceedings (and those are the words to which I would particularly invite the attention of the Council) and the double examination of witnesses increases the chance of the witnesses being intimidated, add to the hardships involved in their attendance with the consequence of making them less ready to come forward, and also afford time for them to forget the facts'.

"So it seems to me that the Rowlatt Committee apparently thought that during the commitment proceedings under the Criminal Law Amendment Act, witnesses would be cross-examined and then they would again be cross-examined before the special bench of the three High Court Judges. That is really not so. Under the Criminal Law Amendment Act, the procedure is that the commitment proceedings are to take place *ex-parte*; the accused is not to be present, no pleader will appear, the accused has no right of even any access to the court. That being so, there will be no delay as the Committee seems to think, and there will be no double cross-examination of witnesses as the Committee suggests. The only advantage the accused has under the Criminal Law Amendment Act is that by this procedure of having the witnesses examined before the Magistrate he exactly knows, when he is tried before the High Court, what the charge against him is, what the evidence against him is. As soon as the case is committed to the High Court, according to one of the sections, copies of the depositions recorded by the Magistrate are to be given to the accused. So he exactly knows what case he has got to meet. That advantage is now proposed to be taken away; beyond that I see no difference. I know there is one more provision in the proposed Bill, namely, that the accused may be examined as a witness on oath if he expresses his desire to the court to be so examined. The Part is intended with a view to securing speedy trial of certain offences, but the provision regarding the examination of the accused is calculated in my humble opinion to lengthen the proceedings rather than secure speedy trial, because, if the accused is cross-examined, new matters may be brought to light, with the result that the prosecution might ask the court to examine further witnesses on behalf of the Crown to meet those new matters, and the accused might also request the court to call witnesses on his behalf in regard to such matters.

"Anyhow, the object with which the Part is proposed to be enacted will be frustrated by the provision regarding the examination of the accused. I therefore think that this Part is absolutely unnecessary in view of the powers which the Government already possess, unless of course it is simply introduced for the purpose of inserting a provision for the examination of an accused person. I trust, therefore, that the Government will rest content with the powers which they already possess under the Criminal Law Amendment Act—powers which are really very drastic and one should have thought the time had arrived for a repeal of that Act. There is thus absolutely no case made out for the enactment of the proposed Part, and I trust Government will drop it."

The Hon'ble Sir Verney Lovett:—"My Lord, I only rise to explain that the last sentence in the second clause of paragraph 181 of the Rowlatt Report, which says—

'We may further point out that the trial of such cases without jury or assessors was introduced by the Indian Criminal Law Amendment Act, 1908',

in no way governs what follows. The next clause is entirely separate and merely goes on to say that the Committee considers that commitment proceedings should be avoided. It gives the reason why. The last sentence of the second clause in no way governs the third clause."

12-30 P M. **The Hon'ble Sir James DuBoulay**:—"My Lord, the Hon'ble Mr. Patel has made my case easier by arguing simply that these provisions are already practically on the Statute-book and therefore are unnecessary. He has not attacked the provisions themselves, and it is not therefore necessary for me to go into any great detail as to the reasons for which we require Part I.

"We want to set up special tribunals only in the case of these revolutionary and anarchical movements. In places where scheduled offences are prevalent, a special procedure is to be followed with the object of avoiding lengthy proceedings; and our reason for desiring this is the excessive prolongation of the trials which have occurred in certain conspiracy cases, of which many examples must be in the minds of Hon'ble Members of this Council. I need only mention the Alipur Conspiracy case, the Howrah Gang case and the Barisal Conspiracy case. In each of those cases from the time the accused came before the Magistrate to the time judgment was passed by the Court to which the trial was committed there was an interval of more than a year .

The Hon'ble Mr. V. J. Patel:—"Were all those cases tried before a Special Bench or before the Ordinary Bench ?"

The Hon'ble Sir James DuBoulay:—"Some before the Special Bench, and some before the ordinary Courts. The abuses of such prolonged proceedings are fairly obvious, and the Rowlatt Committee who went into this matter very carefully arrived at the conclusion that the delay involved by these dilatory proceedings and the subsequent appeal should be avoided. They gave very good reasons. I need not quote them all, but in paragraph 181 which Mr. Patel has already referred to the following will be found:—

'It is of the utmost importance' they say, 'that punishment or acquittal should be speedy both in order to secure the moral effect which punishment should produce and also to prevent the prolongation of the excitement which the proceedings may set up'.

Very often it is a very unwholesome excitement among students and others who may be interested in these trials. The Committee specially refer to the delays involved by commitment proceedings and the double examination of witnesses; they point out that this not only increases the chance of witnesses being intimidated, but adds to the hardships involved in their attendance with the consequence that they are less ready to come forward, and furthe likely to forget the facts of the case on which they are going to give evidence.

"There is the argument, which we must all sympathise with, that you must not have a speedy trial at the risk of a miscarriage of justice. But, I think, it would be casting an unmerited slur on the ability, the intelligence and the fairness of the Judges of our High Courts if Hon'ble Members endorsed those arguments by supporting this amendment. We all want justice, but it is preposterous to suggest that in the special tribunals which this law will set up, we shall have anything else. I find it difficult to believe that there is anybody in this Council who does not believe that there are very serious evils in these delays in the administration of justice; and I find it equally difficult to believe that there is anyone here who does not feel that something ought to be done. And here we have the strongest possible Committee, composed of men whose instincts and training all tend to make them set their faces like a rock against anything in the nature of injustice, making a proposal of the nature we have embodied in the Bill. We have adopted their proposal and we have made some small modifications in the Select Committee, and these will come up for discussion hereafter when the other amendments are taken up for consideration. But it seems to me that this Part I, though it may be open to modification in points of detail, embodies a vital principle of the Bill. I submit that the Council have already expressed their opinion on this principle of the Bill when they agreed to refer it to the Select Committee, and that they would be stultifying themselves now if they supported this amendment."

The Hon'ble Mr. M. A. Jinnah:—"It seems to me, my Lord, that the Hon'ble Member who spoke on behalf of the Government has not appreciated the point of Mr. Patel's amendment. Mr. Patel's point, as I understood, was this. The Act of 1908 which was avowedly passed for this purpose, as the Preamble shows: 'An Act to provide for the more speedy trial of offences . . . . dangerous to the public peace'. Therefore the object of that Act was, firstly, speedy trial. The object of the first Part of the Bill now before the Council is also speedy trial. The Hon'ble Mr. Patel does not

quarrel with that at all. The Hon'ble Mr. Patel says 'You have already got a Statute which is called the Indian Criminal Law Amendment Act, 1908, and if your object is to have a speedy trial, or I will put it in this way, my Lord, a speedier trial, if you please, why don't you amend the Statute which is already in existence?' That is the point. The Hon'ble Mr. Patel as I understand him says that instead of doing that you have practically reproduced that Statute, with some modifications. One would have thought, my Lord, that the proper course, the simplest course, was to amend that Act if you want a speedier trial. If that alone was the object of the Government, I am sure, my Lord, that in this Council with regard to that object the Government would have received a great deal of sympathy and support. But I cannot really understand what is the object of the Government in repeating Statutes. You have got one already on the Statute-book, you want to have another."

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, I support the amendment which has been put forward by the Hon'ble Mr. Patel. One advantage, to which attention has not been drawn, of the existing law to which reference has been made, namely, Act XIV of 1908, is that it is stated in the first clause of it that the Act will apply to the Province of Bengal, Eastern Bengal and Assam, and that the Governor General in Council may by notification in the Gazette of India extend the whole or any part thereof to any other Province. My Lord, from all we have heard and read, it would seem that if any justification can be pleaded for passing an Act of the nature proposed, though we dispute that there is such justification, it is to be found in the state of things in Bengal. Now this Act XIV of 1908 is already in force in Bengal. It has not yet been shown that there is any necessity for extending this Act to any other province. I do not mean to say that I am satisfied that there is necessity for enforcing such an Act in Bengal; but assuming that there is, it has not been shown that there is any necessity for applying such an enactment as is proposed in any other province. Secondly, several of the most important provisions of Act XIV of 1908 are the same as those which it is proposed to re-enact in Part I of the Bill before us. For that reason also it seems unnecessary that Part I should be re-enacted. It has been said that section 3 of the present Bill prescribes the conditions in which it is proposed that the enactment should be extended or applied to a particular province. But the language of the Preamble of Act XIV of 1908 is wide enough to cover cases that are likely to be taken up under the proposed enactment.

"My Lord, the next point on which I wish to say a few words is one which has already been mentioned by my other friends who have spoken before me, that is, the question of a speedy trial. I once more submit that it is not the right thing for the Government to desire a speedy trial. My Lord, I referred yesterday to the Prevention of Crimes Act of Ireland of 1882 That was an Act passed when two foul murders had taken place in Phœnix Park, and the whole of the United Kingdom had been stirred to its depths by the wickedness of the crimes. But even at such a time the Act which was passed by Parliament to deal with such crimes, sought to provide for a fair and impartial trial. It did not seek to provide for the speedy trial of offences. 'A fair and impartial trial' are the words which are used in the Act itself. I cannot think, my Lord, why the Government should not shudder to think of the consequences of a speedy trial when such a trial may end in the obliteration of a fellowman from existence. I submit, therefore, that it is bad enough that there should be one Statute like Act XIV of 1908 on the Statute-book. It will be doubly bad to add one more Statute of the same character to the Statute-book, particularly when the objects served by the two Statutes would be almost entirely the same. My Lord, if the Government will consider this aspect of the question, I hope it will yet see that it is moving in the wrong direction. There is no doubt one difference. Act XIV of 1908 provides for the speedy trial of certain offences, but yet it does not do away with commitment proceedings. Commitment proceedings are to be had when the Local Government or the Governor General in Council thinks that proceedings in respect of any offence mentioned in the Schedule thereto—and the Schedules also are very much similar to the Schedule proposed here—should be

tried according to the provisions of Part I of Act XIV of 1908. They are to make an order in writing to that effect, and on receipt of such an order the Magistrate who has taken cognizance of the offence, or any other Magistrate to whom the case has been transferred, shall proceed to inquire whether the evidence offered upon the part of the prosecution is sufficient to put the accused upon his trial for an offence specified in the Schedule. Witnesses are to be examined by the Magistrate on oath. any statement which the accused may voluntarily tender is to be recorded. If the Magistrate is satisfied that a *primâ facie* case has been made out against the accused, he is to frame a charge against the accused, and make an order directing that the accused be sent for trial to the High Court where a Special Bench of the Court consisting of three judges is to be constituted to try the case. Now, my Lord, commitment proceedings were also to be gone through under the Irish Act. It was left to Sir Michael O'Dwyer to suggest in the communication which he made to the Government of India in 1914, that commitment proceedings, as well as the provision for appeal, should be eliminated. The Ordinance that he suggested was taken as the basis of the Defence of India Act and the rules made thereunder, as the Rowlatt Committee have stated in their report. I submit, my Lord, that matters stood in a very different position in 1914, and measures which were adopted in view of the situation in 1914-15 should not be re-enacted now when the war is ended and conditions are entirely different from what they were in that year. There is no justification yet shown why there should be speed secured. The Hon'ble Sir Verney Lovett drew attention to certain portions of paragraph 181 of the Rowlatt Committee Report. The Committee say there that it is of the utmost importance that punishment or acquittal should be speedy, both in order to secure the moral effect which punishment should produce, and also to prevent the prolongation of the excitement which the proceedings may set up. Now, my Lord, that does not take into account the danger of injustice which may be perpetrated upon the accused. They also go on to say: 'Furthermore, the delays involved by commitment proceedings and the double examination of witnesses increase the chance of the witnesses being intimidated, add to the hardships involved in their attendance with the consequence of making them less ready to come forward, and also afford time for them to forget the facts'. With regard to the first, my Lord, the Committee have taken an exaggerated view of the delays involved by commitment proceedings and the double examination of witnesses, and also of the increased chance of witnesses being intimidated. I submit few witnesses who come forward to speak against an accused person on oath before the Court, are likely to go back upon what they have said by reason of intimidation, because there is also the fear of the law which will inflict punishment upon them if they did. Secondly, if they are such timid people that they are so much liable to the influence of fear, we should not forget that they may also not unlikely be liable to other influences, influences of intimidation or force which might have led them to make untrue statements in the first instance. The one apprehension has to be pitted against the other. It has at any rate to be borne in mind. As to the second point that it will add to the hardships involved in their attendance, with the consequence of making them less ready to come forward, I could never imagine that such an argument would be urged on behalf of Government. If witnesses would be less ready to come forward to give evidence because of the hardships involved in their attendance, where a man is charged with a heinous offence, the law can compel their attendance. The provisions of law are strong enough and ample enough to compel their attendance. Lastly, the Committee said that delay would also afford time for them to forget the facts. On the contrary, I think that when they have once made statements on oath, that would help them to fix the facts in their memory rather than lead them to forget them. I submit, therefore, that the reasons advanced are very meagre, and afford very slender support to the proposal to do away with commitment proceedings; and I submit that a case has not been made out for providing for a still more speedy trial of serious offences than is already provided for by the existing Act. The provision relating to the examination of the accused on oath is no doubt a new provision. I will not deal with this point further now, but will do so at a later stage. I will only submit that there is nothing to justify the

enactment of a provision similar to the one that already exists in Act XIV of 1908. For these reasons I support the amendment of the Hon'ble Mr. Patel. There is only one other point which I should touch upon. In replying to the proposal of the Hon'ble Mr. Sarma to define 'revolutionary' movements, my official friends argued as if it were a sin to receive light if it did not come to them before a particular moment. I venture to differ from them. We are all human beings, including my friends on the official benches; and it will be within their experience that a certain amount of light is flashed on the question after the first discussion. I do not think they would seriously shut their eyes against any illumination, and refuse to accept the light it brings, if it should not have happened to come to them at a particular juncture. It is possible that the provisions of Act XIV of 1908 were not as fully examined as they might have been when Part I of the Bill before us was drafted. It is possible that the discussion that has now taken place has thrown some light on the points, which may well induce even the Government as at present constituted, to reconsider its position. I hope the Hon'ble the Home Member will bring a judicial mind to bear upon the situation as it stands, and that he will not be obstinate in refusing to accept this suggestion merely because it comes at a late stage."

The Hon'ble Rao Bahadur B. N. Sarma:—"My Lord, I did not intend to intervene in the course of the debate, but there is one point that strikes me and I should like to allude to it. There is no repeal of the Schedule. Section 42 of the Bill says 'All powers given by this Act shall be in addition to, and not in derogation of, any other powers conferred by or under any enactment'. That is to say that the Government can in any particular case choose the procedure laid down under the Act of 1908 or resort to the provisions of the new Bill. They may lay the particular case before the Magistrate and then follow the procedure under the Act of 1908, or they may proceed to the High Court under this Bill. My submission is that there must be some certainty on the subject as to the procedure that is likely to be followed in this particular class of cases. Powers should not be conferred on the executive leading to the engendering of suspicion in the minds of the people. The procedure may be A in the case of one individual and B in the case of another. Most of the offences mentioned in the Schedule of the Act of 1908 are the offences mentioned in this Schedule with the exception of 124A, 148, 153A, the sections under the Arms Act, etc., and a few others. In respect of the offences common to both there should be a repeal of those in Act XIV of 1908. The procedure should be certain so that no option may be left to the Government to choose which procedure should be followed in a particular case, or Act No. XIV should be modified and amplified in a way to suit the new condition of things. I think that Part I may be deleted or Act XIV may be usefully modified to suit the altered conditions."

The Hon'ble Sir William Vincent:—"My Lord, I did not intend to speak on this motion and in that respect, I am in much the same position as the Hon'ble Mr. Sarma, but it appears to me that one of the points raised in the speech of the Hon'ble Mr. Patel is such that I should take the earliest opportunity of replying to it. The gravamen of his allegation as I understand it is 'you have got this Act XIV of 1908, why therefore should you want a new Act for the trial of offences?' My Lord, the answer is very simple. The procedure under the Bill is entirely different from the procedure prescribed by the Act of 1908. There is no provision in the Act of 1908 for a trial at or near the scene of occurrence. Again the Act of 1908 contemplated a commitment procedure which might be *ex-parte*. There was, however, a kind of commitment procedure; that is one of the defects that the Rowlatt Committee deprecated as tending to delay the course of justice. Secondly, the evidence which may be adduced in trials under this Bill is different from the evidence which may be adduced in trials under the Act

The Hon'ble Pandit Madan Mohan Malaviya:—"May I correct the Hon'ble Member. Section 4 of the Act says, 'The accused shall not be present during an inquiry under section 3, sub-section (1), unless the

Magistrate so directs'. So it is open to a Magistrate to direct that the accused may be present at the inquiry."

The Hon'ble Sir William Vincent:—"That accentuates my point that there is a difference in the procedure under this Bill and the Act of 1908, for there is no previous magisterial inquiry necessary under the Bill. Returning to the question of evidence, the evidence which may be adduced under Part I is materially different from that which may be adduced under the Act of 1908. Hon'ble Members will observe that under Part I of the Bill provision has been made for the examination of the accused as a witness. That is a matter which was not provided for also in the Act of 1908. Finally, the offences for which persons may be tried under Part I of the Bill differ from the offences for which they were to be tried under the Act of 1908. The Act of 1908 is, however, in some respects wider. The provisions of the present Bill can be brought into operation only under specified circumstances which have been recited at considerable length to the Council already. The existence of any such special circumstances is not a condition precedent to the institution of proceedings under the Act of 1908. I have now explained what the differences in the new enactment are. We are not as ignorant as the Hon'ble Mr. Malaviya supposes of this Act of 1908, nor were the Committee; their attention must have been drawn to that Act, for they make a distinct reference to it. The fact is that it was found by experience in Bengal that the provisions of the Act of 1908 were not effective, and it is for that reason that the present procedure has been suggested. I do not intend to deal at length with the other points raised by the Hon'ble Mr. Malaviya. He says that witnesses are not likely to be intimidated, that there is nothing in the causing of inconvenience to witnesses by making them attend frequent trials, that these are not points to which this Council ought to pay any consideration, that the speedy administration of justice is also not a matter of great importance. My Lord, we know that witnesses—honest witnesses—are intimidated. We also think that it is desirable that witnesses should not be interfered with more than is necessary in assisting Government. We have not found that people in the class of life from which witnesses come are usually ready to come forward and give evidence. If the whole of their business is dislocated by constant attendance and frequent delays, then it becomes impossible to get them to give evidence in these matters.

"Finally as to expeditious trial; there was a suggestion made, I do not suppose the Hon'ble Member meant it really, but I ought to repudiate it. It was suggested that in our desire to secure a speedy trial, we were neglecting the obvious necessity for a fair, impartial and careful trial. My Lord, I submit that this Council cannot find anything in the Bill to support this argument. Who can say that a Court consisting of three High Court Judges is likely either to be incompetent to perform its duties properly or not to use its best endeavours in performing them impartially? The fact is that we have found the Act of 1908 ineffective, and for that reason we seek to supplement it by an Act prescribing a short and speedy but careful and impartial trial before the strongest court possible. There is a great point in what the Hon'ble Mr. Sarma said, and that is the existence of these two Acts side by side. Well, my Lord, if this Act had been permanent, it probably would have been desirable to repeal the Act of 1908, and we shall even now have to consider that question further, and I am much obliged to Mr. Sarma for drawing my attention to the matter, but I must say I think that the position has been considerably altered by the fact that the present Bill will only be temporary in duration."

The Hon'ble Mr. V. J. Patel:—"My Lord, it has been suggested by the Hon'ble the Home Member that the provisions of Act XIV of 1908 have been found to be ineffective. I wish he had quoted instances of delays having taken place owing to the commitment proceedings provided for in the Criminal Law (Amendment) Act, 1908. This Council, before it comes to any conclusion on the desirability of passing this particular Part, must know, is entitled to know, how many cases were tried under that particular Act, and in how many of them such delays took place. Without any definite statement regarding the question before this Council, I respectfully submit the Council is 1 P.M.

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not in a position to judge whether the provisions of the Act have been really found to be ineffective. On the contrary, so far as I can judge, I find that most of the cases after 1908 were, instead of being sent to a special bench, sent to the Court of Sessions and the accused had

The Hon'ble Sir William Vincent :—"May I explain, my Lord? The reason for that is, we found the special bench ineffective, the procedure was not suitable."

1 P.M. **The Hon'ble Mr. V. J. Patel** :—"So the procedure under the Criminal Law (Amendment) Act, according to the statement of the Hon'ble the Home Member was found worse than the ordinary procedure in ordinary courts of law, where you have the full commitment proceedings, the Sessions Court trial with a jury and the appeal proceedings in the High Court. According to the Hon'ble the Home Member's statement, the Act worked more for the benefit of the accused than the existing provisions of the Act. I confess I cannot understand that position at all. So far as the Rowlatt Committee's Report is concerned, they have nowhere in their Report said so. Is it really a fact the procedure under that Act was found to be worse than the ordinary procedure laid down in the Criminal Procedure Code and the Evidence Act? Without any instances to show that the delays that had taken place were so great and so serious that it has been found necessary to supplement the Criminal Law (Amendment) Act by this particular Chapter, we must pause.

"Then again it has been suggested that the commitment proceedings involve an amount of delay. I admit that. Such delay is, according to the Rowlatt Committee's Report due to double examination of witnesses. As I say, the Rowlatt Committee has committed some error there. There is no double examination unless the Magistrate chooses to allow the accused to be examined, as the proceedings are to be *ex-parte*. It is only a question of a day. The Magistrate examines witnesses and sends the accused directly to the High Court. There is no question of any delay. There is no question of a double examination of witnesses, there is only examination-in-chief in the committing Magistrate's court. The cross-examination takes place in the High Court, and I do not see how that would materially delay the proceedings.

"Then, again, it has been suggested that the number of scheduled offences differs from the number given in the Schedule to the proposed Bill. Well, I have carefully examined the proposed Schedule and compared it with the Schedule to the Criminal Law (Amendment) Act. What do we find? The two sections that are proposed to be added now are Sections 124A and 153A. These are the only two additional sections in the present Schedule. Well, my Lord, if the intention of Government was to bring the trials under these two sections also under the Criminal Law (Amendment) Act, the better course for them would have been to bring out openly and straightforwardly an amending Bill asking this Council to consent to the insertion of sections 124A and 153A in the Schedule to the Criminal Law (Amendment) Act. There would have been no difficulty.

"Then again another point that has been made is that the rules of evidence are different in this Bill from the rules that are laid down in the Criminal Law (Amendment) Act. I submit, my Lord, that here the Hon'ble the Home Member is wrong. In the Criminal Law (Amendment) Act also almost similar rules of evidence have been enacted. It has been provided there that the statement of a witness before a Magistrate is admissible in evidence at the trial if it is proved that the witness is dead or incapacitated on further proof that such death or incapacity has been caused in the interest of the accused. The special rules here also lay down the same thing. I invite the attention of the Council to clause 18 of this Bill which says that—

'Notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872, where—

(*a*) the statement of any person has been recorded by any Magistrate, and such statement has been read over and explained to the person making it and has been signed by him, or

(*b*) the statement of any person has been recorded by the Court, but such person has not been cross-examined,

such statement may be admitted in evidence by the Court if the person making the same is dead or cannot be found or is incapable of giving evidence, and it is established to the satisfaction of the Court that such death, disappearance or incapacity has been caused in the interests of the accused.'

So special rules of evidence under the Bill are similar to the rules of evidence under the Criminal Law (Amendment) Act. I, therefore, submit that unless it is proved to the satisfaction of this Council that the provisions of the Criminal Law (Amendment) Act have failed in bringing about a speedy trial in anarchical and revolutionary crimes, this Council is not justified in accepting this Part of the Bill. With these few words I hope the Council will see its way to delete this Part.

The motion was put and negatived.

[At this stage the Council adjourned for Lunch till a quarter past two.]

The Hon'ble Sir William Vincent:—"My Lord, I move that clause 3, as amended by the Select Committee, stand part of the Bill."

The Hon'ble Mr. G. S. Khaparde:—"My Lord, the amendment which I wish to move to clause 3 is as follows:—that for the words 'in Council' the words 'in Legislative Council' be substituted. In other words the word 'Legislative' be introduced between the words 'in' and 'Council'. Looked at from that point of view, it is one of the shortest amendments. The reason for this is that in the affairs of men it is not enough always to be in the right. In most cases in private life one decides rightly and is quite happy about it, but in matters where others are concerned, it is not enough to be in the right, one must also appear to be in the right, and this necessity for appearing to be in the right is at the bottom of all the formalities of law and the procedure of allowing a man to have the best counsel he can get, and so on. These formalities at one time were carried much further than they are now. In the Riot Acts in England one reads that before an order to fire could be given the Magistrate had to read out the whole Act, and from that we have the phrase that, when a person becomes angry, they used to say that he read the Riot Act. That is to say there was a formality before giving the order to fire in the case of a flagrant breach of the peace. These formalities are sought now to be removed, at least in the case of particular offences dealt with by this particular Bill, but I believe that although these formalities may be curtailed or done away with, still the necessity for being in the right and appearing to be in the right remains, and for that purpose some formality, not very lengthy, not one imposing a great delay, but yet a formality, so as to assure the people that an endeavour is being made to do justice in the case and go about it in a cautious way, is necessary So we have got to have some formality and in order to have it I have introduced the word 'Legislative' between 'in' and 'Council.' That is to say, before the Governor General in Council proclaims a particular area and applies this Part of the Bill to it, he has got to take the Legislative Council into his confidence. It really is a matter of taking into confidence because a simple Resolution may be introduced that this Bill be applied to a particular area and that resolution will be easily passed. It may give an opportunity to the Hon'ble the Home Member to explain why Government is taking this action, and probably it may lead to a debate, but a short debate, and that will be enough to assure everybody that steps are being taken with great caution and care. This formality to me appears very necessary to inspire confidence among the people. 2-15 P.M.

"There is a further reason for this and that is one which did not occur to me this morning, but was made apparent to me to-day. The Council will probably remember that an attempt was made to define the word 'revolutionary' this morning, and we saw the opposition it met with and also the support it received. When there is a word in the law which has got several meanings, and those meanings insensibly shade from one to the other, one way of confining that particular word to a particular meaning is to define it in the law itself. And as it is urged that that word will

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have to be used and acted upon, not by a Court, but by the Executive Government, I think we should like to define the meaning of that word. When the Court decides a matter both parties are present with their Counsel and the matter is argued out, so there is very little danger, at least the danger is very much minimised, whereas when action is taken by the Executive, when parties are not present, it is different. It may be that the reports are very good and reliable; it may be that they are exaggerated; it may be that they are wrong, and the executive officers have got to make up their minds on these reports and follow a particular line of action. So that, I think, even in the interests of the executive officers themselves, they would like to see the word carefully defined and made precise so as to be easily acted upon. I think this Council will agree that before any action is taken, it is just as well that the circumstances which have involved the exercise of these powers should be explained and understood and talked about so that the world will know what is going on, and why a particular Act has been made necessary, and why it is being put into force. Giving publicity to it at this stage appears to me very necessary, and so I say that, before proclaiming a district or area, the Governor General in Council should make up his mind and pass a Resolution in the Legislative Council and then proceed to apply it. There is a further reason still. It may be said that the Council may not be sitting at the time or it would involve delay. If the Council happens to be sitting, there would be no delay, because the matter could be introduced as an urgent matter, and your Excellency could suspend the Rules of Business and the thing could be done at once. If the Council does not happen to be sitting and the matter is really so important that exceptional measures should be taken, then the Council could be easily summoned. At any rate we could do as they do in England when Parliament is not sitting and cannot be easily summoned, then the matter is brought before Parliament, seven days I believe was the time allowed by the Act of Parliament, and the matter was placed on the table as the phrase goes. So I think that something similar might be done here. But I should like that it should be that the Governor General in Legislative Council is satisfied, not alone in the Executive Council, where beyond reports and probably some information, they have not access to the general population and any way of finding out what really is going on and knowing it first hand, as we call it in law. They may have heard about it, and yet, not having that personal knowledge of the matter, they may not feel quite certain about it. So they may share the responsibility of that action with the Council, and that is my object in putting forward this amendment.

"With these words, I submit the amendment for the acceptance of the Council."

The Hon'ble Mr. V. J. Patel:—"May it please your Excellency, I have got a somewhat similar amendment and I should therefore like to accord my hearty support to the amendment of my Hon'ble friend Mr Khaparde. He has placed the case so clearly and so lucidly before the Council that it is unnecessary for me to add any new arguments. The amendment merely says well, if you are satisfied that there is a case for a Notification, satisfy us also, and then issue it. It asks for nothing more. When you want to issue a Notification, you kindly come and place all the reports that you have got before us and let us also be satisfied. We would also like to take part in it. And, after all, you don't lose much by it. You have got a majority and you will always, even if we be unwilling to consent to the issue of a Notification, be able to issue it just as you pass this Act against our wishes."

The Hon'ble Sir William Vincent:—"My Lord, this, and a number of later amendments to this Bill, raise questions which are to my mind of considerable constitutional importance, and if I deal with them now, I do not propose to speak on the matter at any length again.

"I regard this amendment of the Hon'ble Mr. Khaparde as a not unnatural attempt to control the executive by direct order of the Legislature. But it is nevertheless a departure from constitutional practice. Even if we take the case of the United Kingdom, Parliament does not interfere at all with details of

administration, nor does it undertake the business of administration. And the reason for this is, I think, not far to seek. A deliberative body cannot really adequately deal with such matters. An assembly of the nature of this Council is really concerned with questions of policy and principle rather than with the application of the policy, and the responsibility for the application must remain with the Executive Government. The device of using the Legislature to control the application of an Act is, if I may say so, clumsy. The Members of this Council must be lacking in knowledge of the requirements as compared with the Executive Government. There are many papers which cannot be put before all members, and indeed there is much information which, I think, all the Hon'ble Members of this Council would not trouble to read. Further, the consumption of time and labour in placing these matters before Council is really disproportionate to any benefit. The responsibility for the application of these Acts must rest with the Executive Government, and no attempt of this kind on the part of the Legislature to usurp powers which do not really appertain to the Legislature could be accepted.

"Well, my Lord, if this is true of Parliament, and I believe it to be in accordance with constitutional practice, how much more so is it true of this Council, the powers of which are very strictly limited by the Statute? Section 67 of the Government of India Act, 1915, describes definitely what the powers of the Legislative Council are. 'At a meeting of the Indian Legislative Council', it says, 'no motion shall be introduced other than a motion for leave to introduce a measure for the purpose of enactment, etc., etc.' Then it goes on to say: 'Notwithstanding anything in the foregoing provisions of this section, the Governor General in Council may, with the sanction of the Secretary of State, make rules authorising at any meeting of the Indian Legislative Council the discussion of matters of general public interest, and of the Budget,' and so forth. Well, the intention of the Statute and the rules framed thereunder is that this body in matters executive and administrative should only act as an advisory body to the Governor General in Executive Council, and it is for that reason that Resolutions of this Council are only recommendatory in character and not mandatory. The real controlling authority over the Government of India is Parliament and the Secretary of State, and it is to them that the Government of India are responsible for the application of the law and, generally, for all administrative acts. And I submit to the Council that it would be subversive of the whole constitutional practice if this amendment and these other amendments which likewise give this Council a power of direct interference with the administration were passed.

"I think the Hon'ble Member referred to the Irish Act in his speech. Was that the Act that he mentioned? I am not quite sure if that is so."

The Hon'ble Mr. G. S. Khaparde :—"Yes."

The Hon'ble Sir William Vincent :—"There even there is no provision for the Lord Lieutenant of Ireland taking the previous sanction of Parliament before applying the Crimes Act. The law provides that if he applies the Act and, if the Parliament is at the time sitting, he is to lay a Proclamation before Parliament. If the Parliament is not sitting at the time, then the Proclamation has to be laid before Parliament within fourteen days of the opening of the next Session, but there is no question of the previous sanction of Parliament. So far I have dealt with what I conceive to be the constitutional objections to the procedure which the Hon'ble Member advocates.

"The practical objections are, as I think Members of this Council will admit, equally cogent : the necessity for bringing this Act into operation may be urgent and may occur, if it occurred at all, as likely as not when the Council was not sitting. The Council at present meets at long intervals, and it seems unreasonable that the Government should be deterred from bringing into operation any portion of this Act merely by reason of the fact that the Council is not sitting. Of course I may be told that the Government could on each occasion summon an emergency meeting for the purpose of considering this

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question but, I submit, that that would impose an unreasonable restriction on the Executive Government; it would also involve delay if on every occasion on which this Act is to be applied to the smallest area, we had to have a meeting of Council, and probably find a month later that we had to re-summon the Council, in connection with another area. I hope that Hon'ble Members will see that this is unreasonable. It is always open to them, if this Council thinks that the Act has been unreasonably applied, to bring in a Resolution in this Council, recommending the Governor General to withdraw the notification which he has issued, but I ask the Council to agree with me that both on constitutional grounds and for practical reasons the present amendment cannot be accepted."

The Hon'ble Mr. G. S. Khaparde:—"I agree with one part of the speech of the Hon'ble the Home Member, and it is that they do not impose in Ireland, or even in England for the matter of that, previous sanction; but they provide for the sanction being taken as early as possible. At any rate they provide an opportunity, I believe, for the matter being discussed, and they provide this opportunity by laying a Proclamation in the House of Commons and by sending it to the Clerk of the Crown. I submit that my object is the same, which is to secure a discussion of the matter. A discussion before the issue of the Proclamation is probably better than discussing it after the thing is done, because once the Government is committed to a particular line of action, it is difficult even for the Government to withdraw from that position. It is also difficult for us to bring in a Resolution, as was suggested by the Hon'ble the Home Member. It appears easy to move a Resolution, but the materials for moving that Resolution generally are not available. They are available only to Government officers or to Hon'ble Members in office; but to us they are not available. So this *post facto* remedy of moving a Resolution appears to be difficult and inadequate, and that is why I wish to provide for it in this way in this particular amendment; though in a subsequent part I try to avail myself of this remedy of asking the Executive to lay the Proclamation on the table of this Legislative Council. That was my object in moving this amendment at this stage, and that is all I have to say."

The motion was put and negatived.

The Hon'ble Mr. V. J. Patel:—"My Lord, I formally move that in clause 3 after the words 'he may' the words 'with the previous approval of the Indian Legislative Council' be inserted. The matter has been sufficiently discussed, and I do not wish to take up the time of the Council. I merely formally move the amendment."

The motion was put and negatived.

2-38 P.M. **The Hon'ble Rao Bahadur B. N. Sarma:**—"Your Excellency, I beg to move that to clause 3 the following provisos be added:—

'Provided that no action shall be taken by the Governor General in Council, without giving the Indian Legislative Council or the Legislative Council of the province in respect of which such a notification is proposed to be made, an opportunity of expressing its opinion by a Resolution passed on the subject:

Provided further that such notification shall at any time after the expiry of one year from the date thereof be withdrawn on the recommendation of the Indian Legislative Council or the Legislative Council of the province in respect of which it may have been made by a Resolution passed by three-fifths of the members of either of the said Councils.'

"These are really two amendments which have been embodied in this amendment of mine for the sake of conciseness and brevity and inasmuch as both pertain to clause 3.

"The several objections which the Hon'ble the Home Member has suggested against the acceptance of the amendment of my friend the Hon'ble Mr. Khaparde and the amendment of my friend the Hon'ble Mr. Patel do not apply to my amendments. I shall deal with the constitutional aspect of them later. The first part of this amendment asks for the acceptance and enforcement of the principle that no man shall be judged unless he is heard. It is proposed by clause 3, and the subsequent clauses having a similar object,

that the Governor General in Council should have the power to proclaim to the world that the whole of India or that the whole of a province or a part of a province is in a disturbed state, that anarchy prevails there and revolutionary movements are rife. The honour, the prestige and the good name, therefore, either of India or of a particular province or of a particular district, are vitally involved in this Proclamation. I ask that before the Governor General in Council takes such a very important step which may lead to the casting of a slur on the loyalty of a portion of His Majesty's subjects, an opportunity should be given to the representatives of the people to show that they do not deserve the condemnation which is proposed to be passed on them. Mark you, I do not ask that the recommendation of the Legislative Council should be binding upon the Executive Government at this stage. I only ask that an opportunity should be given for the people to be heard. I could not formulate any other channel than the Legislative Council for the expression of the people's opinion. I, therefore, think that on that ground this amendment can be very strongly supported unless there are practical objections or constitutional objections of so great a character that the principle can or should be sacrificed to the exigencies of the case. Now, one objection that may be taken is that it may not be possible, and that is the strongest objection possibly, and the one that has been urged by the Hon'ble the Home Member, that it may not be possible to place all the confidential papers relating to the subject before the Legislative Council, and consequently any Resolution that may be brought in may not be of that practical value as such a Resolution might otherwise be. My Lord, I would submit that the same question will have to be faced sooner or later—sooner rather than later ; and that no very great object can be gained by the postponement of the discussion which will inevitably follow unless the Resolution is vetoed—no object can be gained, I say, by the postponement of the discussion of such a subject. Supposing the notification is made, at the earliest possible opportunity, the question will be brought up for discussion ; such papers as could be disclosed to the Council would have to be disclosed, and the Government would have to state their case. Would it not be better that that case, so far as it can be formulated, should be placed before the Council with a caution, possibly, by the Member in charge, that there is much more which might be said but which sound policy dictates that it be not disclosed, and therefore that the Council should not take it for granted that those are all the materials upon which the Government has acted or is going to act ? I would submit that the reasons in favour of such a course are these. The section says that two things are necessary. *Firstly*, if in the whole or any part of British India anarchical or revolutionary movements are being promoted. That is one thing ; and *secondly* that scheduled offences in connection with such movements are prevalent to a particular extent, that is number two. It may be first of all that the statement of fact that anarchical or revolutionary movements are being promoted may be questioned. Of course without disclosing any very great details it will be perfectly possible for the Government Member to state the reasons for the existence of the belief on the part of the Government that such movements are being promoted. Members of Council and the outside public would be in a position to know what exactly is meant by the revolutionary movements which are likely to give trouble or are giving trouble. Therefore, there can be no difficulty so far as that aspect of the question is concerned. Then it may be the fact also that scheduled offences are prevalent in that area or in the whole of India ; it may be that dacoity is very greatly prevalent, that mischief is being resorted to, that murders are numerous and growing year by year in numbers ; these may be facts and it would be possible for Members of the Legislative Council who are acquainted with the particular districts or of the whole of a province to come forward to show that, although it may be a fact that those offences are largely on the increase or largely prevalent, still those crimes have absolutely no connection whatsoever with any revolutionary movement or anarchical movement in that or any other part of India. I lay some stress upon this, your Excellency, because the causal connection between the two is likely to be invoked in a large measure and without a due analysis especially where the executive officer can easily explain the prevalence of a particular crime. A police officer or police superintendent may for the matter of that honestly believe that offences within a particular

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area which he cannot detect or which he cannot take for conviction can be explained only on the hypothesis that they are connected with the revolutionary movement. A man may be preaching politics in a particular area which may also happen to be a place where offences of a particular character were rife. Nothing would be easier than to connect the two, and it is just possible that the Government when it analyses and finds that A, B and C have preached certain doctrines in a particular area and also the coincidence of certain offences in that particular area, may legitimately agree without anything else being said to the contrary that the two are connected in the way that is suggested by their officers, for after all officers must be the judges on the spot, whereas a little discussion in the Council following a statement of fact may help to clear the situation and give materials to the Government of India and the Local Governments also to pause and see as to whether there is any real causal connection between the two, or whether the increase of crime or the non-detection of crime are due to adventitious causes.

" Coming to the constitutional aspect of the question there is nothing in this part of my amendment which conflicts whatsoever with the supremacy of the executive in matters of administration. All that I ask for is, that an opportunity which sooner or later would be taken should be given before such an announcement is made.

" Then I come to the second part of my amendment. The second part of the amendment is that after an order or notification is in force for one year, then if the Legislative Council should by a Resolution passed by a three-fifth majority recommend that that notification should be withdrawn, the Executive Government should be asked to do so. Now, there may be an apparent contradiction, the constitutional theory to which the Hon'ble Member referred in this part; but I submit that there is not. I take it that even after the reformed Councils sit the administration of the branches of law and order and justice would still be with the Executive Government as is proposed to be under the tentative reform proposals. It is at present so. But what I say is that it is not the normal administration of justice that would be interfered with by the Legislative Council by means of a Resolution, but that we in empowering the Executive Government with extraordinary powers suited only to specific occasions depriving the people of their liberties under certain conditions, that we the Legislative Council subject those powers which are conferred upon the executive in particular ways, that is, the powers are subject to those limitations; therefore, there is no question of the Legislative Council interfering with the administration of the powers which are conferred by the Legislative Council upon the Executive. What we say is in giving the powers we subject those powers to those limitations. I do not see in any way whatsoever any conflict, if the grant of these exceptional powers is within the competence of this Legislature in executive action being controlled in particular cases especially of this drastic character. I, therefore, accepting the theory of the Executive Government's powers, see nothing whatsoever in my amendment which conflicts with the enforcement of that theory in the present or the future. Then I do not say that an ordinary majority would do. I put it that an extraordinary majority of $\frac{3}{5}$ that would amount to $\frac{3}{4}$ of the non-official Members of the Council, because we take it that even if the Councils are enlarged there would be still an official element, therefore it would be $\frac{3}{4}$ of the non-official element in the Council, should agree to a particular Resolution before they recommend it for adoption or before it is binding upon the Executive Council. You may ask 'Why should not the Council ask for a repeal of the Act at the time?' I have my own grounds for not saying it. I accept it now that the Legislative Council are going to keep the Act in force for three years only. I only want the notification to be withdrawn in a particular case or particular cases under special circumstances which would be brought to prominent notice by the Legislative Council in the course of their discussions; but the Government would still have the power after withdrawing that notification to issue another notification should circumstances require it. Therefore this does not prevent the Government from giving the people an opportunity of restating their case under altered conditions; I do not mean to say under the same conditions, under altered conditions coming to the Council. I think, my Lord, there

must be some reality in the exercise of the control of the Legislative Council over the powers which have been given to the Executive Government in this drastic fashion, and I think there is absolutely nothing wrong in the suggestion that I have made. It may be said that I have given an alternative power to the Imperial Legislative Council and to the Provincial Legislative Councils. My object was this: the Government of the provinces is naturally, I suppose, at present under the control of the Government of India and will, I take it, be also after this Bill is passed under the control of the Government of India. Therefore it is in conformity with the constitution of the country that the Legislative Council here should have power to interfere in a case when it thinks fit to do so; but ordinarily it would not unless the whole of India is to be included in the notification, thereby sullying the fair name of India. The whole of India is to be included in the notification and if it is only a part of the province the question would legitimately arise in the first instance in that Council. The amendment is worded elastically with the object of conforming to the traditions and constitution of the Provincial Governments and the Government of India and the Imperial Legislative Council, and at the same time to give an opportunity to Provincial Councils to express their views and opinions on matters that particularly appertain to them. If there should be any technical difficulty in the wording that is a matter that can be set right, but it is the principle underlying that I hope will be accepted."

The Hon'ble Sir William Vincent:—"My Lord, I must oppose this amendment for exactly the same reasons that I gave in the previous case. The main difference in this amendment is that the Hon'ble Member proposes that the action of the Governor General in Council should be controlled by the Provincial Legislative Council as well as by the Indian Legislative Council. I do not think that this suggestion will commend itself to many Members here. The second part of his amendment really gives mandatory effect to a Resolution of this Council which is exactly contrary to the spirit of the rules and of the Statute. I may add also that the delay in issuing the notification which the procedure described by the Hon'ble Member would entail would be a serious obstacle to public business. Finally, I should like to repeat that where responsibility is there power must be. The responsibility for maintaining law and order in this country is with the Governor General in Council and they are responsible to His Majesty's Government. If they have that responsibility, they must have the power to enforce it."

The Hon'ble Rao Bahadur B. N. Sarma:—"My Lord, I have nothing more to say."

The motion was put and negatived.

The motion that clause 3, as amended by the Select Committee, stand part of the Bill was put and agreed to.

The Hon'ble Sir William Vincent:—"My Lord, I move that clause 4 stand part of the Bill."

The Hon'ble Mr. V. J. Patel:—I beg to move the following amendment that in clause 4 (*1*) after the words 'it may' the words 'after hearing the person concerned' be inserted. The clause will then read:—'Where the Local Government is of opinion that the trial of any person accused of a scheduled offence should be held in accordance with the provisions of this Part, it may, after hearing the person concerned, order any officer of Government to prefer a written information to the Chief Justice against such person.' The Council has just disposed of two amendments seeking to provide that the notification under clause 3 should be issued with the previous approval of the Legislative Council. It has also disposed of another amendment of my Hon'ble friend Mr. Sarma that before the issue of a notification an opportunity should be given to the representatives of the people to express their views. These two amendments having been disposed of, the Local Government as the clause stands on 3-5 P.M.

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being satisfied that the trial of any particular person should be held in accordance with the provision of this Part will have the power to order any officer of Government to prefer a written information to the Chief Justice against that person. All I ask is that, when the Local Government on information from the police or otherwise is of opinion that a trial of any person should be held under this Part, that person should be given an opportunity of stating why no information should be laid against him. An opportunity of having his say in the matter should be given to him. I trust that this proposal will not be objected to by the Hon'ble the Home Member."

The Hon'ble Sir William Vincent:—"My Lord, I should have been glad if I could have accepted this amendment, but I am afraid I cannot. It was only a few minutes ago that the Hon'ble Member cited, with approval as I understood him, the Act of 1908. May I point out to him that under that Act there is no right such as is now suggested? The reasons which actuate the Government in this matter are that the trial will be held before three High Court Judges only if, in the opinion of the Government, that order is necessary in the public interest and for the preservation of law and order. It is not as if the accused was going before any incompetent tribunal or any tribunal that is not likely to do him ample justice. I have not heard any complaints against the tribunals set up under the Act of 1908, and in this case the Judges will be of the same class. Another point is that one of the objects, in fact the main object of this Part of the Bill, is to provide for an expeditious trial of persons, and such expedition is defeated by preliminary proceedings of this kind. Directly you have a preliminary hearing you have the appearance of counsel, pleaders, affidavits, etc. Further, it would be very difficult to decide what particular officer should hear on behalf of the Local Government an application of this character. If there was any question of prejudicing the accused by an order under this Part there might be something to be said for the amendment, but actually the accused will go before a stronger tribunal than is ordinarily the case. I must, therefore, oppose the amendment."

The Hon'ble Mr. V. J. Patel:—"My Lord, I have only one word to say on this point. It is said that the proceedings would be lengthened because of the appearance of a pleader. As to that I would only say this that there is no provision for a pleader to appear as of right. I do not ask for such a right. The pleader would appear in cases where he is permitted to appear by the Local Government. My point is this, why are these provisions necessary? When there is ample provision why come here and ask for further legislation?"

The motion was put and negatived.

The Hon'ble Mr. V. J. Patel:—"My Lord, I move that in clause 4 (*2*) after the words 'any person' the words 'whose case is under inquiry before a Magistrate or ' be inserted.

The amended clause will run thus:—

'No order under sub-section (*1*) shall be made in respect of, or be deemed to include, any person whose case is under inquiry before a Magistrate or who has been committed under the Code for trial before a High Court, or a Court of Session,' etc., etc.

"What I want, your Excellency, is this, that the cases which have already been sent up by the police to a Magistrate for inquiry should not be touched by the notification. I shall give one illustration. Supposing two cases of some scheduled offences are pending before a Magistrate and simultaneous inquiry is being proceeded with in both. Suppose they are finished on one and the same day and the Magistrate writes his order of committal in one case and has not been able to finish his order of committal in the other, say the notification is issued on the next day. It means that the man against whom the order of committal is already passed will have a differential treatment under the clause as it stands. Difficulties of this kind will arise, and two persons similarly situated, will be differently treated. When the case is already before a Magistrate there is no justification why the Magistrate should be deprived of his

jurisdiction and the case should be taken away from him and tried under the provisions of this Part. I, therefore, respectfully submit that cases which have already been sent to the Magistrate before the issue of a notification should not be dealt with under the provisions of this Part."

The Hon'ble Mr. G. S. Khaparde:—"My Lord, I have an amendment on the same point, and though it is not exactly in the same words, at any rate the object is the same. My amendment is that in clause 4 (*2*) after the words 'Court of Session' the words 'or has been placed before a Magistrate' be inserted. It comes to the same thing, though my reason is different from what my Hon'ble friend Mr. Patel has urged. My reason is that when a Court is seized of a case where a case is put before a Magistrate, it can only be removed from his cognisance by the order of a superior Court, that is to say, the High Court can transfer it, but it has got to go to a Magistrate again. The principle, of the law, as I understand it, is that once the case is before a Magistrate, another Magistrate of equal power may have to try it, generally it does not go to a Magistrate of inferior power, it can only be taken away from him by an order of the High Court. In legal language I suppose it is said that when a Court is seized of a case and when a Magistrate has taken cognisance of a case, nobody can interfere with it except a judicial authority. In this connection even if a case is before a Magistrate, this section appears to empower the Local Government to take that case away from him and make it over to the Special Tribunal. This, I think, infringes the principle of which I was speaking, namely, that once a case is before a Magistrate nobody can interfere with it except a higher judicial authority and it goes to nobody except to judicial officers.

"Another argument in favour of the amendment is that once a matter has gone to the Courts it is not desirable to take it away and put it under executive jurisdiction. The tendency of modern legislation is not to combine the powers of the executive and the judiciary in one and the same person. And there is the inconvenience pointed out by Mr. Patel in the case of a person having two cases against him. One case has been committed, and before the other case has been committed, this order of the Local Government arrives. Then what is to be the result? They have to arrange it somehow or other. To avoid cases of this kind and difficulties which may arise in the administration of the law, I propose that once a case has been put before the Magistrate and has gone to the ordinary judiciary, it should not be brought under the provisions of this section. This is what I have to say in support of my amendment, and I speak now so that I need not make any speech later and my amendment may be put along with Mr. Patel's amendment."

The Hon'ble Mr. C. A. Kincaid:—"My Lord, I do not want to take up the time of the Council for more than two or three minutes, but in the course of these two or three minutes I shall try and show that there are one or two good reasons, at least what appear to me to be good reasons, for rejecting these two amendments and keeping the Bill as it stands. Now the underlying facts of this amendment are these: Under clause 4, section 1, of the Bill under certain circumstances the Local Government can lay information to the Chief Justice. By clause 5 of the Bill the Chief Justice then constitutes a bench of three High Court Judges to try the case. Section 4, clause 2, however, lays down that where a case has already been committed to a Sessions Court or to a High Court, no information shall be laid about it by the Local Government to the Chief Justice. Now the first point I will put before the Council is that there is a precedent for that. In section 2 of Act XIV of 1908 you have almost an exactly similar wording. Sessions cases committed to the High Court and the Sessions Court are referred to, but cases that come before the Magistrate are left out. When I was in Bombay many years ago attached to the Legal Remembrancer's Office it was the rule of that office that if you had a good precedent you ought to stick to it, and I think the Hon'ble Mr. Moncrieff Smith will agree with me that it is a good rule. If you have a single clause or section it is always risky to add to it, as the addition may become a pitfall or a snare. The fact, therefore, that there is the precedent of Act XIV of 1908 is a very good reason for following it.

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The second point is this: Under clause 8 of the Bill it is laid down that the procedure prescribed for the trial of cases by this special bench is the procedure prescribed for the trial of warrant cases by Magistrates. Now every lawyer in this Council knows that there is a good deal of difference between the procedure laid down for the trial of Sessions cases and that prescribed for the trial of warrant cases. Therefore, if you should take a Sessions case, already begun, from a Sessions Court or a High Court and give it to the special bench to try, you would not only have a change of Court but a change of procedure. That would be an anomaly and might be to the prejudice of the accused and his advisers. But where a case has come before a Magistrate and has been transferred to the special bench, the Magistrate and the special bench both being bound by the rules of procedure, namely, those prescribed for warrant cases, there would not be that anomaly.

"My third point is this: Under section 350 of the Criminal Procedure Code, where a Magistrate takes over a part-heard case (a case in which his predecessor has heard some evidence), he need not hear all the witnesses *de novo*, but can convict the accused partly upon such evidence as he himself hears and partly upon the evidence taken down by his predecessor. Now as I read this Bill in conjunction with the Criminal Procedure Code, it seems to me, of course it is a point on which there is some doubt, but it seems to me, that when a case has been transferred from a Magistrate to a special bench, the special bench being bound by the rules of procedure prescribed for the trial of warrant cases, would be empowered to take advantage of section 350. Therefore they would be able to save all the labour and all the time involved in taking evidence twice over. There is no corresponding section where a Sessions case is transferred; therefore if a Sessions case were transferred to a special bench, it seems to me that the special bench would have to go over all the witnesses over again and that there would be a great waste of time and energy.

"I will now shortly refer to the possibility which my Hon'ble friend Mr. Patel mentioned, namely, where two cases have been tried simultaneously by a Magistrate and the order of committal has been passed in one case, but had not been passed in the other, and where in the short interval between the evening of one day and the morning of another day the Governor General in Council has introduced Part I into the district. Well, my Lord, it is not only in Sessions cases that the one is taken and the other is left, and I do not think there would be any very great harm if this somewhat improbable incident occurred. I do not very well see how the learned Magistrate could be trying two cases simultaneously, and it seems almost incredible to suppose that, in the interval between one evening and the next morning, the Governor General would satisfy himself of the existence of a revolutionary movement and the occurrence of scheduled offences requiring speedy trial. I do not think that is a case likely to arise. In any case if it did arise what would happen? Nothing very grievous; in one case the accused person would be tried in the ordinary way and in the other case by a bench of three Judges of the High Court of Bombay or Calcutta, as the case may be.

"Now my Hon'ble friend Mr. Khaparde has laid down two principles. One is that only a judicial officer should transfer. Well, as a matter of fact, the District Magistrate is in a sense a Magisterial officer, but he is also the executive head of the district and he constantly transfers cases from one sub-divisional Magistrate to another. Mr. Khaparde also laid down the principle that when a case is brought to the Judicial Department it should not go out of it. That may be a counsel of perfection. But even if it is taken from the Magistrate for a moment by the action of the Governor General in Council, it still goes back a very short time afterwards to the Judicial Department. There is no permanent transfer of a case from the Judicial Department, and therefore it seems to me that the argument of the learned gentleman is purely academic. I mentioned, my Lord, the disability which exists in the case of transferred Sessions cases and which does not exist in the case of a case transferred from a Magistrate to a bench of judges. On the other hand, there is this great advantage, that no matter how eminent and how experienced a Magistrate may be, he cannot have more authority or more competence

than a bench of three High Court Judges; thus both the accused and the Crown will gain by the transfer of the case from his court under clause 4."

The Hon'ble Mr. G. S. Khaparde :—" If I have your Excellency's permission I should like to say one word."

His Excellency the President :—" We are not discussing your amendment; we are discussing Mr. Patel's."

The Hon'ble Mr. G. S. Khaparde :—" I only wanted to explain one point."

His Excellency the President :—" A personal explanation ? "

The Hon'ble Mr. G. S. Khaparde :—" No."

The Hon'ble Mr. V. J. Patel :—" I am really surprised that my 3-18 P.M.
Hon'ble friend Mr. Kincaid should think that it would be to the advantage of the accused whose case is before a Magistrate, that his case should be transferred to the tribunal for disposal. He forgets that if the case before the Magistrate is allowed to proceed in the ordinary way it will be committed to the Court of Sessions, where he will have the advantage of a jury. He also forgets that on conviction he will have the right of appeal, and yet he thinks that if the case is sent to the Special Tribunal from the Magistrate, it will be an advantage, as if these provisions are enacted for the advantage of the accused. My Hon'ble friend Mr. Kincaid seems to think that in a case in which the whole evidence has been recorded by the Magistrate the tribunal to whom the case is transferred will be at liberty to read the evidence already recorded and will pass final orders. Well, that is another reason why I say such cases should not be dealt with under the provisions of this Act. Suppose a case is completed in a Magistrate's court, and the notification comes into force, before the order of committal is written, all that remains for the tribunal is to pass orders on the papers recorded by the Magistrate. That is the procedure that I object to. It will do an amount of harm and prejudice to the accused person, and I respectfully submit that such a procedure should not be allowed. After the case is fully gone into by the Magistrate, if the notification is issued, what will happen ? Although the police have fully investigated the case and although the Magistrate has gone through the whole case, the procedure will be that new information will have to be laid before the Chief Justice. Now, is that a procedure at all desirable in cases which have already been investigated by the police and inquired into by the Magistrate ? Under these circumstances, I submit the Council will see its way to accept this small amendment."

The motion was put and negatived.

His Excellency the President :—" Mr. Khaparde, do you wish to move your amendment ? "

The Hon'ble Mr. G. S. Khaparde :—" I did not intend to speak, but now I shall speak for two minutes and these two minutes I shall take to answer the two objections that were taken by my Hon'ble friend Mr. Kincaid. One is that to controvert my statement that once a case gets into the hands of the judiciary it should not pass into the hands of the executive, he said the District Magistrate often transfers cases, but the District Magistrate is a Magistrate and not an executive officer for the time being, so that objection does not hold I think.

" The other principle that I endeavoured to make out was that a case always goes through the judiciary and nobody else.

" In this case the interference as it is sought to be made would be from the Local Government or the Imperial Government, but not from the judicial authority.

" The third point which I wish to lay stress upon—and it is rather important—is in the case of part-heard cases. Magistrates can certainly dispose of

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the case on the evidence already recorded, but, I believe, the accused has also the right of demanding a trial *de novo* and he would not be able to claim a trial *de novo* here. These are practical difficulties which will arise and it is better to meet them beforehand. Therefore, I have submitted this proposal that when a case has been put before a Magistrate, it should not be sent to the Special Tribunal but left to be disposed of by the ordinary law of the land."

The motion was put and negatived.

The Hon'ble Rao Bahadur B. N. Sarma :—"My Lord, I do not propose to move my next amendment."*

* That in clause 4 (2) after the words "Court of Sessions" the following words be inserted :—
'or is undergoing a trial in respect thereof before a Magistrate.'

The amendment was by leave withdrawn.

The Hon'ble Mr. V. J. Patel :—"My Lord, I beg to move 'that in clause 4 (*2*), for the words 'whether such offence was committed before or after' the words 'if such offence was committed more than three months before' be substituted. The clause will then read :—

'No order under sub-section (*1*) shall be made in respect of, or be deemed to include, any person who has been committed under the Code for trial before a High Court, or a Court of Session, but, save as aforesaid, an order under that sub-section may be made in respect of any scheduled offence if such offence was not committed more than three months before the issue of the notification under section 3'."

The Hon'ble Sir William Vincent :—"No, no. There is no 'not' in the amendment."

The Hon'ble Mr. V. J. Patel:—"I wish I could see the original.

The Hon'ble Sir William Vincent :—"I took the trouble to have it looked up."

The Hon'ble Mr. V. J. Patel :—"I do not know whether it exists in the original; I do not wish to press it if the word 'not' does not exist in the original."

The Hon'ble Mr. H. Moncrieff Smith :—"The Hon'ble Mr Patel's amendment has been verified; it is as it stands in the list."

The Hon'ble Mr. V. J. Patel :—"Then I do not press it."

The amendment was by leave withdrawn.

3-30 P.M. **The Hon'ble Mr. Kamini Kumar Chanda** :—'My Lord, I beg to move—

"That to sub-cause (*4*) of clause 4 the following be added : —

'calling upon him to show cause within such time as may be fixed by the Chief Justice why the trial should not be held in accordance with this Part The Chief Justice may, if he thinks proper, extend such time on the application of the accused.'

"After the Local Government or officer deputed by the Local Government has filed an application before the Chief Justice, the clause says :—

'The Chief Justice may by order require any information to be amended so as to supply further particulars of the offence charged to the accused, and shall direct a copy of the information or the amended information, as the case may be, to be served upon the accused in such manner as the Chief Justice may direct' (and if my amendment is accepted) 'calling upon him to show cause within such time as may be fixed by the Chief Justice why the trial should not be held in accordance with this Part. The Chief Justice may, if he thinks proper, extend such time on the application of the accused.'

Well, my Lord, the principle of this matter has been disposed of so far as it related to the action of the Local Government, and it was lost. I have no reason to believe that my amendment will receive a better fate, but still I must place it on record.

"My Lord, it seems to me this is a very reasonable proposal. When you are going to take away the jurisdiction of the ordinary Court, deprive a man of the safeguards which an ordinary trial affords to him, the safeguard, for instance, of the commitment proceedings, of a jury trial, of an appeal, when you are taking away all these things from him, why not hear him before the final order is passed? You are not bound to accept what he prays for, but I say do hear him. Strike but hear. This is the amendment I wish to place before the Council."

The Hon'ble Sir William Vincent:—"My Lord, I am afraid that this amendment, though possibly not so intended, would really have the effect of frustrating a great object of the Bill which is to secure an expeditious trial. I have tried to explain repeatedly that the prisoners in this case will be put before a very strong Court, as good a tribunal as we could possibly choose, namely, three Judges of the High Court, and the reasons for which the prisoner is put before that tribunal are reasons of State and affecting the public interests. The Chief Justice cannot be in a position to know whether the requirements of the public peace or the state of the country make a speedy trial by this tribunal necessary. It is not as if the men were being put before an incompetent or other than a very impartial and strong tribunal. If I may refer again to this Act of 1908 of which we are said to be so ignorant, may I say that there is no provision there at all similar to the proposed amendment, and I have never heard of any injustice occurring by reason of the omission of it."

The Hon'ble Mr. Kamini Kumar Chanda:—"Just one word, my Lord, with reference to the objection that has been raised by the Hon'ble the Home Member that the Chief Justice may not know the grounds which render a speedy trial necessary. I would ask what is there to prevent these facts being placed before the Chief Justice by the Local Government? We do not ask for an *ex parte* order. Let all the facts be placed before the Chief Justice. Then, no doubt, it will be a great luxury which the accused will have of being tried by three High Court Judges, but will he be able to pay for the luxury which a trial before these three High Court Judges will entail? I do not think the objections urged by the Hon'ble the Home Member are very convincing."

The motion was put and negatived.

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I beg to move—that the following sub-clause be added to clause 4:—

'(5) The Chief Justice may direct that the accused, if in custody or under arrest, be produced before him and when he is produced before him, or without directing that he be produced, order that he be admitted to bail.'

"My Lord, there is nothing in this Bill to show where the accused will be or in what condition when the application will be made before the Chief Justice. I presume he will be in the custody of the Government securely lodged in the lock up. But it is not enough to know where he will be or what his condition will be. My submission is that before he is called upon to stand his trial the question of his admission to bail should be decided. It may be that the offence with which he is charged is bailable because you will find a long list of offences given in the Schedule, many of which are bailable, and although it may not be bailable, still the circumstances may be such as not only to justify a man's admission to bail, but to make it eminently desirable that he should be on bail. Therefore, my Lord, I think that this is a matter that ought to be made clear, and my submission is that the Chief Justice ought to have full power to deal with this matter and ought to be empowered to pass orders for bail."

The Hon'ble Sir William Vincent:—"As I have told the Hon'ble Member before this meeting, if he will withdraw this particular amendment, I am quite prepared to insert—if he will move an amendment or even if the Council will allow me to move an amendment—an amendment in clause 19 (2) which will meet the contingency to which he adverts, and will enable the Chief Justice to allow bail in these cases. As a matter of fact, this goes a little

further than the Act of 1908, but it seems to me to be a very fair provision. I believe I am right in saying that the Hon'ble Member is prepared to accept it."

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, so far as that is concerned, I am perfectly willing to accept the Hon'ble the Home Member's suggestion We must be thankful for small mercies. I understood from the Hon'ble the Home Member that the Government are prepared to accept the principle. I therefore beg to withdraw my amendment; but in doing so I cannot resist the temptation of relating a small story here."

His Excellency the President:—"Perhaps the Hon'ble Member will refrain this afternoon."

The amendent was, by leave, withdrawn.

The motion that clause 4 of the Bill, as amended by the Select Committee, stand part of the Bill was put and agreed to.

The Hon'ble Sir William Vincent:—"My Lord, I move that clause 5 of the Bill, as amended by the Select Committee, stand part of the Bill."

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I have this amendment to clause 5:—

'That in clause 5 after the words 'to him' the following words be inserted:—

'and after considering any cause shown by the accused and further inquiry, if any, which he considers necessary.'

"This is merely a consequential amendment, my Lord. As my amendment* has been rejected, it is not necessary for me to move it. I therefore beg leave to withdraw this amendment."

The amendment was, by leave, withdrawn.

The Hon'ble Mr. V. J. Patel:—"My Lord, I beg to move:—

'That in clause 5, for the words 'the Chief Justice shall' the words 'the Chief Justice may after hearing the accused' be substituted.'

The Council will see that I do not desire that the Chief Justice should be empowered to make any inquiry whatsoever. All I want is that if on the face of the information laid before the Chief Justice, there is no case to go to the special tribunal, the accused should be allowed an opportunity to have his say in the matter and the Chief Justice to be empowered to throw out the information. I submit the Council ought to allow an opportunity to the accused person to show that on the face of the information there is no case against him. With these few words I move this amendment."

The Hon'ble Sir William Vincent:—"My Lord, I have nothing to add to the argument that I used in respect of a previous amendment of exactly the same character. The Chief Justice is not, and cannot be, in a position to know whether the requirements of the country necessitate a trial under this Part or not. I must therefore oppose the amendment."

The motion was put and negatived.

The Hon'ble Rao Bahadur B. N. Sarma:—"My Lord, I beg to move that in clause 5 after the words 'three of the' the word 'permanent' be inserted. In substance it would be that the Chief Justice should appoint three permanent Judges of the High Court. It is a matter of some importance and a matter not free from difficulty. I ask that the Chief Justice should select three permanent High Court Judges in pursuance of the principle enunciated by the Rowlatt Committee in paragraph 182 of their Report, with a view to inspire confidence in the public, and in order that the administration of justice may not be exposed to the criticism that officiating judges appointed for

* See page 34, *supra*.

the purpose should have control in such matters. It has been suggested in the report that Judges of the High Court should be asked to try the cases. What they say is this:—

'It seems to us inadvisable that these tribunals should to any extent be composed of persons not already members of the judiciary but selected by the executive for the purpose of the specific case. Nothing that we have seen suggests that the special tribunals hitherto appointed have been unfair towards the accused, but we think the objections in principle cannot be overlooked.'

"Now in giving effect to that recommendation there are considerable difficulties to be faced. The High Court may at any time consist of permanent Judges, of acting Judges and of temporary Judges. The temporary Judges may have been appointed or may be appointed to dispose of arrears of work generally, or may be appointed in view of special exigencies arising, such as the trial of cases of this description. Now these officiating Judges may be appointed by the Government for a particular case, or they may be appointed generally for the purpose of these cases. But the trouble is, once they are appointed officiating Judges of the High Court, should a number of cases arise after the trial of the particular case is over, there would be nothing to prevent cases under this Act that might come up thereafter in the High Court from being referred to the temporary judge? I think that in principle there ought to be no distinction made between one Judge of the High Court and another Judge of the High Court. I am strongly against the enforcement of any principle which would vitiate the sound maxim of the perfect equality of the Judges. But once you appoint officiating Judges to clear off arrears, the criticism that these Judges are appointed by the Government with reference to their particular tendencies would still remain, and they would be exposed to the charge that being only acting Judges or officiating Judges they may unconsciously be biassed by the hope of being made permanent or influenced by the fear of incurring the displeasure of Government. I am not stating that any Hon'ble Judges of the High Court would be actuated in practice by such considerations. I am not suggesting that for a moment. But the members of the Rowlatt Committee as well as the public, I think, are perfectly justified in asking that the administration of justice should be above suspicion. Therefore our object must be to prevent officiating Judges from trying these specific cases. Well, then, if we are to prevent these Judges from trying such cases, what is to be done? There seems to be only one way and that is to rely upon another principle, namely, that is in providing for special tribunals for a specific purpose we contemplate the trial only by permanent Judges of the High Court. That is the only way to escape from that dilemma of not drawing a distinction between one Judge of the High Court and another. We contemplate only permanent Judges of the High Court because they are always there. We constitute them as special tribunals, having regard to the particular exigencies of this piece of legislation. We are not thereby infringing the generally accepted maxim that no distinction should be drawn between one Judge and another. I hope therefore that in asking for the constitution of a bench of three permanent Judges of the High Court, we are not deviating from that maxim, while at the same time we are safeguarding ourselves against the just suspicion, or at any rate, against the suspicion of the public that officiating Judges may have too much to do in the trial of cases of this description. I submit, My Lord, as I have said, the point is not free from difficulties; but I think in the interests of the administration of justice and on this specific ground that we are constituting new tribunals for a particular purpose, there would be nothing wrong in providing for the appointment of three permanent Judges of the High Court to try cases under this Act."

The Hon'ble Dr. Tej Bahadur Sapru:—"My Lord, I desire 3-45 P.M. to support this amendment of my Hon'ble friend, Mr. Sarma. I think that it is not fair to the accused, not fair to the officiating Judges of the High Court and not fair to the Government, that a trial like this should take place before Judges who have yet to be confirmed. Now what is the charm about a permanent Judge of the High Court? The charm is not that he is necessarily abler than another Judge, but that he is thoroughly independent; he has got no favours to expect and no frowns to fear from any one. If you really want

to inspire confidence in trials like these by Judges of the High Court, it is only fair that you should give us, if I may use the expression, *pucca* Judges of the High Court, not men who have still got to be confirmed, a trial by whom will not inspire, to my mind, the same degree of confidence as a trial by Judges who have already been confirmed."

The Hon'ble Mr. Surendra Nath Banerjea:—"My Lord, I desire to support this amendment. I need not recapitulate the reasons which have been urged. I remember that this point was mentioned in the Select Committee, I think, by my Hon'ble friend, Pundit Madan Mohan Malaviya, and if my memory serves me right, the Hon'ble the Home Member was inclined to favour the proposal.

The Hon'ble Sir William Vincent:—"May I rise to a point of order, my Lord. I have always understood that proceedings in Select Committee are confidential save in so far as they are disclosed in the Report; in any case my memory does not coincide with that of the Hon'ble Member."

The Hon'ble Mr. Surendra Nath Banerjea:—"I will withdraw that reference to the Select Committee. I draw from my own resources, and I will say that so far as my impressions go without reference to the proceedings of the Select Committee, I was under the belief that the Hon'ble the Home Member was inclined to accept

The Hon'ble Sir William Vincent:—"May I rise again to a point of order and ask on what occasion I made the statement to the Hon'ble Member?"

The Hon'ble Mr. Surendra Nath Banerjea:—"In that case I should be disclosing a proceeding which you do not want me to disclose. But I stand upon absolutely unassailable ground in expressing the impression that I have formed. I do think apart from what passed in Select Committee which may be confidential, the reasons in favour of the amendment seem to be absolutely unassailable, and it strikes me that in a matter of this kind my Hon'ble friend and the Government may see their way to accede to the proposal which has been put forward. It would inspire confidence and, I think, it is the right thing to do, and therefore I appeal with some little confidence to the Hon'ble Member, apart from the proceedings of the Select Committee, to accede to the amendment."

The Hon'ble Sir Verney Lovett:—"My Lord, it is necessary that I should say a few words just to explain what the Rowlatt Committee really meant. Their meaning was somewhat misrepresented, no doubt unintentionally, by my friend, Mr. Sarma, when he spoke on the 7th of February. He said: 'There can be no doubt that the Rowlatt Committee meant that acting Judges should not be appointed to these tribunals. That is not what the Rowlatt Committee meant.

The Hon'ble Rao Bahadur B. N. Sarma:—"May I just say, my Lord, one word of explanation. I did not say acting Judges; I meant Judges appointed *ad hoc*."

The Hon'ble Sir Verney Lovett:—"I will quote exactly what the Hon'ble Member said directly. What the Rowlatt Committee wrote was this. At the end of their paragraph 182 they say: 'Substitutes can be appointed for the judges called away, and if there is no power it can be obtained. Substitutes, however, ought not to try these cases.' What they meant was that substitutes appointed *ad hoc* should not be appointed to try these cases. They did not mean that judges who were already acting on High Courts should not be appointed to try these cases. They did not intend to interfere with the discretion of the Chief Justice in such matters. My Hon'ble friend, Mr. Sarma, said the following on the 7th of February. He was referring to a member of our Committee: 'I have the highest respect for my distinguished friend, a Judge from Madras, and I say from my knowledge of him that he could not

have allowed any corrupt or personal motives to creep into his decision. But still the Rowlatt Committee has said that the future is to be safeguarded by permanent judges of the High Court being placed on these tribunals, thereby showing distinctly their opinion that Government were not altogether happy in choosing an acting man.' Well, my Lord, the Rowlatt Committee did not say this or did not mean what the Hon'ble gentleman thinks they meant. They certainly never dreamt of showing distinctly an opinion which they never for one single moment entertained."

The Hon'ble Mr. C. A. Kincaid:—"I wanted to say just one word, my Lord. Since the Simla Session of this Council last year, I have been a member of a High Court which contains four judges, of which not one single member is permanent. In these circumstances Mr. Sarma's proposal for three permanent judges is absolutely impossible."

The Hon'ble Sir William Vincent:—"My Lord, there is in the report of this Committee, as far as I understand it, no suggestion that permanent judges only should be appointed on these tribunals. Further, I would point out that we have not provided in the Bill that the Executive Government should choose the judges for this duty. The judges will be chosen by the Chief Justice himself. We have followed exactly in this, I believe I am correct in making this statement, if not, the Hon'ble Member will correct me, the precedent of the Act of 1908. There is no distinction as far as I know in the powers of an officiating temporary or permanent judge. They have exactly the same authority in the matter of hearing appeals in matters of life and death, and they can inflict any sentence that is authorised by the law. I do not think that it can be said with any justice that an officiating judge of a High Court is open to any suspicion of dishonesty or liable to attack or that he is not as competent as anyone else; and I suggest that if we accepted a modification of this kind we should really be accepting an amendment which constitutes almost a reflection on officiating judges, a reflection to which I should be very sorry to be a party. I repeat again that the Government will not choose the members of this tribunal. A further practical difficulty has already been alluded to by Mr. Kincaid, namely, that when many officers are on leave it might be extremely difficult, if not impossible, to secure the required number of permanent judges. For these reasons I must oppose this amendment."

The Hon'ble Mr. Srinivasa Sastri:—"Your Excellency, as a layman not connected with any of these high offices and having no expectations in those quarters, I am in some difficulty as to how to give my vote. Time was when we used to think that persons occupying such exalted positions were above all temptation and that their character and independence were beyond question. But nowadays we have found permanent judges of the High Courts looking forward to other preferments. The Hon'ble Dr. Sapru said that a man who had risen to a permanent judgeship had afterwards nothing to look to, neither fears nor favours.

"We have seen that High Court Judges have been made members of the Executive Council, and members of the Executive Council have subsequently become High Court Judges. There is at least one gentleman hovering about between these offices and not yet settled down. I think we shall give the benefit of the presumption to everybody, permanent or officiating, and say that they are all above suspicion."

The Hon'ble Rao Bahadur B. N. Sarma:—"My Lord, I pointed out the difficulty and I thought I had suggested a way out of it. What happens? There are a large number of temporary judges and if the permanent strength is exhausted having regard to these exceptional trials, three or four temporary judges are appointed to work off the arrears that have accumulated. The objections which the Rowlatt Committee had was to temporary judges appointed *ad hoc* trying these offences, and they suggested that substitutes should be found to do the work which might fall into arrears. Officiating judges may be appointed when once a trial is on, but the moment that trial is over they cannot be said to have been appointed for the purpose of these trials and would not come within the rule. Therefore the difficulty remains that the Chief Justice would not in practice be able to provide

against these substitutes really sitting on the Bench, and in any event we shall be throwing on the Chief Justice an invidious duty by compelling him to draw a distinction between judges and judges unless you provide by Statute that he should appoint only from among permanent judges. When a judge is appointed to clear off arrears he cannot be said to be a judge appointed *ad hoc* for a particular trial; he would be sitting to try offenders under these Acts. Therefore the objections which the Rowlatt Committee anticipated would in practice remain whatever may be the desire of the Chief Justice or of the Governor General in Council. Therefore if on the special tribunals you provide that only permanent judges of the High Court should sit, there would be no slur on any particular person. This is a specific Act providing for a particular occasion, and consequently in drawing upon your staff of officers who are always on the permanent lists, there is no harm. It is possible to defend this statutory limitation on more than one ground, and that is the reason why I have suggested the amendment to prevent the Chief Justice from falling into obvious difficulties, and in order that the administration of justice may not be exposed to the criticisms to which it is sure to be exposed especially when seditious trials are held. The only way out of the difficulty is to enact this statutory limitation. Power should be taken, as I have suggested, by the Government to transfer cases to a High Court where there are more permanent judges than five who can dispose of this work."

The motion was put and negatived.

The Hon'ble Mr. V. J. Patel:—"My amendment* is similar to the one just disposed of and I beg leave to withdraw it."

The amendment was by leave withdrawn.

The Hon'ble Rao Bahadur B. N. Sarma:—"I beg to withdraw my amendment that in the proviso to clause 5 after the words 'two such' and after the words 'who are' the word 'permanent' be inserted."

The amendment was by leave withdrawn.

4 P.M. **The Hon'ble Mr. G. S. Khaparde**:—"My Lord, my amendment runs as follows:—

'That after clause 5 the following clause be inserted:—

'5-A. (1) The Court of criminal appeal under this Act shall consist of the Judges of the High Court within the jurisdiction of which the Special Tribunal held its sittings and not less than five of any of those Judges may sit and exercise the powers of the Court:

"Provided that when the number of the Judges of the High Court does not exceed four, the Chief Justice may nominate not more than one Judge and shall complete the Court by the nomination of the rest from either of the following classes:—

(*a*) Persons who have served as permanent Judges of the High Court, or

(*b*) With the consent of the Chief Justice of another High Court, persons who are Judges of that High Court:

Provided further that a Judge who sat in the Special Tribunal shall not sit in the Court of criminal appeal on any appeal against a conviction by that special tribunal to which he was a party.

'(2) The determination of any appeal shall be according to the determination of a majority of the Judges who heard the appeal.'

"I have taken the wording of this amendment partly from 45 and 46 Victoria, Chapter XXV, and partly from clause 5. It is usually said that, where there is a Court of three High Court Judges you don't want an appeal. In Ireland they have a Court which is similar to ours, but notwithstanding that they have provided for appeal there and there is no reason shown why there is no appeal allowed here. I believe there is an argument that when three Judges have decided a case a further appeal is unnecessary, but this is allowed in the case of the corresponding Irish Act, and it seems to me that where a case of life and death has to be decided this is throwing too much responsibility on the Court to decide the matter finally.

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* That in clause 5 before the words 'High Court Judges' the word 'permanent' be inserted and that in clause (*b*) of the proviso to clause 5, before the words 'Judges of that High Court' the word 'permanent' be inserted.

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"In England, a Judge tries the case with the assistance of a Jury of 13, in this country we have only 9, and then the Judge summarises the case and judgment is pronounced. Under the Law the majority of the Jurors are able to decide by their verdict, and there are other safeguards. The three Judges may be very highly qualified, but still I believe it is anomalous to make that question final. As regards Ireland I think its state was worse than that of India, and I hope India will never reach the state of Ireland in this respect. As I said I have taken this from 45 and 46 Victoria. Section 3 of that Act runs: 'the Court of Criminal appeal under this Act shall consist of Judges of the Supreme Court of Judicature in Ireland with the exception of the Lord Chancellor and any of these Judges, no less than three may sit to exercise the powers of the Court.' The first part will be found in the transcript of this in which it is said that with the exception of the Lord Chancellor any of the other Judges shall preside over the Supreme Court of Judicature in Ireland, and I do not know why they excepted the Lord Chancellor presiding in these courts, and I have not discovered the reason. I have omitted that also. I suppose the Chief Justice in India would be about the same as Lord Chancellor in Ireland.

"Then the proviso to this section I have taken from clause 5 which we have already passed which speaks of the total number of Judges. I am aware that there are some High Courts in India which have got only four Judges and not more, and in their case if three Judges are nominated, there would be left only one Judge or the Chief Justice, so in constituting the Appellate Court he will nominate one Judge. The Judge nominated will be himself and he will complete the court by nominating persons mentioned in sub-clause (*a*) or (*b*) in the preceding section. If necessary I suppose he will apply to the neighbouring High Courts to complete the Court and in that way the appeal will be heard. I have also provided, my Lord,—and that amendment will come later on—I have also provided for the right of appeal. Now suppose in this particular instance in appeal the majority of the Judges are to decide the case. Three Judges hold one way and they acquit the man and two other Judges convict him, the man will be acquitted, and if the three Judges convict him, and he is acquitted by the other two, then he is convicted. There is an amendment about this which will come later on which is also in accordance with the provisions of the Crimes Act, namely, that the Judges should be unanimous, anyhow I shall not bring that matter into this subject. There are two points which the Council will have to vote upon, first whether an appeal should be permitted, and if the appeal is permitted, whether it should be in this form. The reason why there should be an appeal I have indicated already because the whole work of 13 jurors in England is done by 9 jurors in India, and three gentlemen, however estimable and good they may be, cannot be expected to come to a right decision.

"The second reason is that human life and human liberty are so sacre that we should safeguard them as much as possible. Thirdly, there will be no delay in this matter. Fourthly, that involves no inconvenience to the Government in any way. Government get their object of speedy trial; if the man deserves to be punished he will be punished soon, and there is nothing lost in giving him a chance of defending himself or taking the chance of being acquitted by a higher court. We know that in Ireland a man committed a grievous offence, I think he was Sir Casement or somebody which led to very serious things. But with all that he was given the chance of an appeal before the Lord Chancellor of England, where of course it was rejected, but that is another matter, but he had a chance. So by the method you propose you take away the chances of appeal or the man being saved by a higher court. That, I think, is one of the matters to which I referred yesterday as being a matter of fundamental rights. Under the law he must have a chance of appeal. To take away the chances of a person of saving himself by appeal is not right, and that was what I was trying to make out yesterday as against the fundamental laws of the realm, and it is a fundamental law that should obtain in India. Yesterday I remember the eminent Jurist the Hon'ble Sir George Lowndes mentioned to us the Regulation passed in 1818 which can take away the liberty

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of a person, and asked us why we should complain about it now. Well, I had not the opportunity of replying to it, but to-day I think I can mention, that Regulation was passed in 1818, but then India was not administered by the Crown, it was administered by the John Company, and we came under the Crown in the year 1858, and therefore the law constituting this Council says that all laws passed after the year 1858 shall be binding. I particularly mentioned it yesterday. Before that or some time about that the Crown assumed the government of India and since then the great Queen's Proclamation which we always cite as the Magna Charta of our liberties

The Hon'ble Sir William Vincent:—"May I rise to a point of order? May I inquire what this has got to do with the right of appeal?"

The Hon'ble Mr G. S. Khaparde:—"I beg to submit that to take away the right of appeal is tantamount to taking away the right of liberty which was conferred upon us by Her Majesty in Her Gracious Proclamation."

The Hon'ble Khan Bahadur Mian Muhammad Shafi:—"May I point out that according to the scheme of the Bill section 5 refers to the constitution of the court, section 6 to place of sitting, then come certain intervening sections which refer to the trial, then comes section 15 which refers to conviction for offences referred to in the Schedule, and clause 16 refers to sentence. Then comes section 17 which says that 'the judgment of the Court shall be final,' so that the question is not pertinent under that section, section 5 merely deals with the constitution of the court. As I myself have an amendment to section 17 which relates to the question of the right of appeal, it seems to me necessary to point out here that the question of the right of appeal is irrelevant unless it is incidental to the constitution of the Court."

The Hon'ble Mr. G. S. Khaparde:—"In regard to what has fallen from the Hon'ble Mr. Shafi, I wish to point out that we must know what constitutes the court of appeal, and when this court of appeal is accepted, then it is time to think of the appeal. When there is no appeal court at all

His Excellency the President:—"You had better first establish your case for right of appeal, and then if you can get the Council to accept that, I think there will be no doubt about establishing a court of appeal."

The Hon'ble Mr. G. S. Khaparde:—"I submit my amendment may be taken at the end of clause 17."

His Excellency the President:—"All right, we will leave it there."

The Hon'ble Mr. G. S. Khaparde:—"Thank you, your Excellency."

The motion that clause 5, as amended by the Select Committee, stand part of the Bill was put and agreed to.

The Hon'ble Sir William Vincent:—"My Lord, I move that clause 6, as amended by the Select Committee, do form part of the Bill."

4-13 P.M. **The Hon'ble Mr. V. J. Patel:**—"My Lord, I beg to move that in the proviso to clause 6, for the words 'the Court shall' the words 'the Court may' be substituted and the words 'for reasons to be recorded in writing' be deleted. So that the proviso will then read as follows:—

'Provided that if the Advocate-General certifies to the Court that it is in his opinion necessary in the interests of justice that the whole or any part of a trial shall be held at some place other than the usual place of sitting of the High Court the Court may, after hearing the accused, make an order to that effect unless, it thinks fit to make any other order.'

"The point raised by this amendment, my Lord, is that the Court should have full discretion to determine the place of its sitting. Because the Advocate-General certifies to the Court that in his opinion it is necessary that the whole or any part of a trial shall be held at some place other than the usual place, the Court should not be bound as it were to accept that opinion and pass the order accordingly. In substituting the word 'may' for the word 'shall' I leave this discretion to the Court. Secondly, in asking this Council to delete the words 'for reasons to be recorded in writing', I want that the Court should not be under any obligation to record in writing any reasons for making any order as regards the place of its sitting. You will find from the next clause, it will not be necessary for the certificate of the Advocate-General to be supported by any affidavit, nor shall he be required to state the grounds upon which such certificate was given. I respectfully submit it is unfair that the law should ask the High Court to state its ground for refusing the application of the Advocate-General and at the same time for the Legislature to say that the Advocate-General shall not be bound to state the grounds on which he bases his application. I submit that if you leave the Advocate-General free to give his certificate without stating any grounds you should also leave the Court to dispose of the application of the Advocate-General without stating any reasons. With these few words I move the amendment."

The Hon'ble Sir George Lowndes:—"My Lord, there does not seem to be very much point in this amendment. My Hon'ble friend Mr. Patel does not want the Court to be obliged to state reasons, and he bases that on the fact that the Advocate-General is not to be obliged to state the grounds of his application. But the two things are not on a par at all. The Advocate-General's statement is based on confidential information, while the order of the Court is necessarily based on a judicial finding, and therefore there is no reason why the Court should not state the reasons for its judgment. In 99 cases out of a hundred it would do so. I am quite content to leave it to the Court to record its reasons or not as it pleases, if the Hon'ble Mr. Patel thinks there is anything in it; but I am not prepared to accept the other part of his amendment because it is not only bad English but bad sense. You can hardly say the Court 'may' do so and so 'unless' it does something else. The two proper alternatives are *shall* do one thing *unless* it has to do something else. If my Hon'ble friend is prepared to accept this suggestion, I am ready to meet him to that extent; otherwise I must ask the Council to reject the amendment."

The Hon'ble Mr. V. J. Patel:—"I am perfectly willing if the Council accepts it. I am in the hands of the Council; I have no objection to the proposed change."

His Excellency the President:—"It is left to you."

The Hon'ble Mr. V. J. Patel:—"It is for the Council to decide and I am one of the Council, and so far as I am concerned, I have already said. I have no objection."

The Hon'ble Sir George Lowndes:—"If that is so I am quite willing to move an amendment to the amendment—that the words 'for reasons to be recorded in writing' shall be deleted."

The Hon'ble Pandit Madan Mohan Malaviya:—"If you will allow me to suggest an amendment to the amendment which the Hon'ble Law Member has suggested, it would probably put the matter in a clearer position than that in which it stands at present. My friend objected to the words 'the Court may' being substituted for the words 'the Court shall,' and now he deletes the words 'for reasons to be recorded in writing'."

The Hon'ble Sir George Lowndes:—"I have only suggested the deletion of these words if it satisfies Mr. Patel and he said it does."

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The Hon'ble Mr. V. J. Patel :—"I have not said it satisfies me; I merely said I had no objection if the Council accepted it."

The Hon'ble Sir George Lowndes :—"Do I understand that Mr. Patel desires to press his amendment? If so, I leave it to the Council. If Mr. Patel is not prepared to withdraw his amendment and accept mine then I move no amendment."

The Hon'ble Mr. V. J. Patel :—"I say I have not the slightest objection to my friend's amendment if the Council does not object to it."

The Hon'ble Sir George Lowndes :—"Does the Hon'ble Member withdraw his amendment?"

The Honble Mr. V. J. Patel :—"I am perfectly willing to withdraw my amendment."

The Hon'ble Dr. Tej Bahadur Sapru :—"I hope your Lordship will allow me to say something before Mr. Patel withdraws his amendment. He may be very much satisfied in accepting the change in his amendment, but I have the very greatest objection to it. I think the court must be required to state its reasons, to be recorded in writing. I certainly think that Mr. Patel is not strengthening the position of the accused; he is weakening it."

The Hon'ble Mr. V. J. Patel :—"I am very sorry my friend Dr. Sapru finds fault with me; I have already stated that if the Council is of that opinion I have not the slightest objection."

His Excellency the President :—I think it will be most convenient if we deal with Mr Patel's amendment as not withdrawn."

The Hon'ble Pandit Madan Mohan Malaviya :—"There are two parts to Mr. Patel's amendment; one is the substitution of the word 'may' for 'shall' and the other is the deletion of the words 'for reasons to be recorded in writing.' I want to know, my Lord, whether either of these is withdrawn."

His Excellency the President :—No, they are both before the Council."

The Hon'ble Pandit Madan Mohan Malaviya :—"With reference to the proposal that the word 'may' should be substituted for the word 'shall', I would ask your Lordship's permission to suggest not only that the word 'may' be substituted for the word 'shall', but also that the words which come subsequently to 'after hearing the accused, make an order to that effect,' should be entirely omitted. If it commends itself to your Excellency, I should like to make that amendment because that would meet the objection of the Hon'ble the Law Member. It should be left entirely to the discretion of the Court. The proposal relates to the Court which will consist of three High Court Judges, and I think it is not very complimentary to such a Court to say in a Statute that the Court shall order that a trial shall be held at some time and place other than the usual place of sitting of the High Court at the request of the Advocate-General. I think it should simply be left to the Court, after hearing the accused, to decide whether it would or would not pass such an order. My whole objection to the wording of the proviso as it stands is that it is not complimentary to the Court to say that the Court shall, at the request of the Advocate-General, pass a certain order. It would be more in keeping with the dignity of the Court to say that the Court may pass such an order."

The Hon'ble Sir George Lowndes :—"My Lord, it is really very difficult to know where we are with Hon'ble Members in this Council. We are usually told that the model we should follow is the Irish Crimes Act. The Hon'ble Pandit now tells us that it is derogatory to the High Court to allow

the Advocate-General to make application upon these terms. But if I may read to the Council what the provision in the Irish Crimes Act is, on this point he will see that we have in this case followed it. Section 6(1) of that Act says :—

'The Attorney General on making an application to the High Court of Justice or a judge thereof, and certifying that in his opinion it is expedient in the interests of justice that a person awaiting his trial for an indictable offence should be tried in some county named in the certificate other than the county in which he would otherwise be tried, shall be entitled as of right to an order directing such person to be tried in the county named in the certificate.'

Therefore, under the Irish Act, it is a case of the Attorney General making an application and being entitled as of right to have a change of venue."

The Hon'ble Pandit Madan Mohan Malaviya:—"May I say one word. If my Hon'ble friend is willing to accept the other provisions of the Irish Act which support the amendments here, I will accept his proposition."

The Hon'ble Sir George Lowndes:—"I am not prepared to accept the Hon'ble Pandit's amendment."

The Hon'ble Rao Bahadur B. N. Sarma:—"I would only point out that, as the wording of the proviso stands, we would be led into very great difficulties if not into ridiculous positions. The Advocate-General is shown certain confidential papers by the Government which, naturally, he would not be able to disclose to the High Court. He need not support his statement by any affidavit; he is not also asked to state any reasons on which the certificate is given. So the Advocate-General informs the High Court 'I would like that this trial should take place in such and such a place.' Then the accused is asked to be heard. The accused does not know the grounds upon which the Government, *i e*, the Advocate-General, wants a trial to take place in any particular place. He has to draw upon his imagination. He has therefore to anticipate the grounds upon which it is possible that the Government has asked that a trial should take place in a certain locality and then to meet those arguments, which perhaps have or have not been in the contemplation of the Government and ask the High Court not to accept the recommendations of the Advocate-General. Well, that is the position of the accused. What is the position of the High Court? The High Court is really reduced to this position that it is merely the amanuensis or the clerk of the Advocate-General. It has to say 'The Advocate-General says so, we accept it because the accused is not in a position to meet that case,' or it has to say 'We reject this application because we do not know the grounds upon which the learned Advocate-General certifies that this trial should take place in a particular locality. Therefore we are not able to say that the accused in opposing it is wrong, so that, inasmuch as no grounds have been placed before us, we reject this application.' I think there should be a stereotyped order in the High Court, namely, 'the High Court rejects this application inasmuch as it does not know the grounds on which this application is based'. I submit that greater confidence should be reposed in the discretion of the High Court, and the word 'shall' ought to be replaced by 'may'. If it is not to be, then I think, later on, the Government should undertake to express the reasons in asking that their request through the Advocate-General should be taken into consideration. I hope that the whole proviso will be taken into consideration together, and not piecemeal, and that the word 'shall' would be replaced by 'may' giving the High Court an opportunity of doing what it likes and of compelling the Advocate-General or the Government to state its reasons."

The Hon'ble Mr. V. J. Patel:—"So far as I am concerned, I would rather like to accept the amendment of my Hon'ble friend the Panditji and withdraw mine, so that one amendment, *i.e.*, Panditji's amendment, may be put to the vote."

The Hon'ble Dr. Tej Bahadur Sapru: —"I do certainly object to these words 'unless for reasons to be recorded in writing' being deleted. I attach great weight to them, and I think it will lead to a great deal of satisfaction on the part of the accused if he knows what are the reasons for the Court taking any particular action. My Lord, there is no question of dignity involved. My learned friend the Hon'ble Pandit Malaviya thinks that it is not consistent with the dignity of the High Court that the Advocate-General should give a certificate like that. As a matter of fact we know that the Advocate-General does give certificates in regard to certain matters. I would much rather have reasons, good, bad, or indifferent, than go without any reasons."

4-30 P.M. **The Hon'ble Mr. M. A. Jinnah**:—"I see there is some misapprehension in the mind of the Hon'ble Dr. Sapru. If he reads this clause carefully he will see that the High Court is required to give its reasons, provided it makes an order against the certificate of the Advocate-General, not otherwise. That is the point, and, therefore, it seems to me that if this clause stands as it is, the Advocate-General will not be bound to give any reasons for a certificate. He will present his certificate and ask the High Court that the trial should take place in a particular place. The High Court shall make an order to that effect unless, for reasons to be stated by the High Court, it chooses to make any other order, namely, any other order against the certificate of the Advocate-General. Therefore, the High Court is called upon to give its reasons only in case it does not comply with the certificate. It means this that when the High Court will be called upon to say 'I do not accept the certificate,' the High Court is obliged to give the reasons in writing. Well, I can quite understand the point of the Hon'ble the Law Member why the Advocate-General presents his certificate without giving his reasons or his grounds, namely, that he may not be able to disclose certain matters which are confidential matters. But surely if you give the accused an opportunity of being heard on this point, namely, whether a trial is to take place in a particular place or not, then it follows that you must give full discretion to the High Court to decide either in favour of the certificate of the Advocate-General or in favour of the accused, and that you should not compel the High Court to give reasons only in case it decides against the Advocate-General. Of course, if you like to follow the Irish Act you can follow it; you can follow anything you like. But you have not followed the Irish Act, you have gone beyond it, and if you are going to give an accused person an opportunity of being heard, then surely it is not consistent with the dignity of the High Court to call upon it to give reasons only if it decides in favour of the accused."

The Hon'ble Dr. Tej Bahadur Sapru:—"I should like to understand whether the Hon'ble Mr. Jinnah meant by the word 'shall' that it is imperative upon the Court to pass an order in favour of the certificate granted by the Advocate-General I do not think it is imperative so long as the words 'unless for reasons to be recorded in writing' are there. Therefore, it seems to me that the Court is not bound to grant an order in favour of the Advocate-General. I am quite clear about it; there is no confusion in my mind. It seems to me that my learned friend seems to attach too much importance to the word 'may'. There is no charm about the word 'may'."

The Hon'ble Mr. M. A. Jinnah:—"My point is a simple one. I think I have made myself clear. What I say is this, that the Court shall make an order to that effect, namely, an order to the effect that the Advocate-General wants unless—perhaps the Hon'ble Member (Dr. Sapru) will allow me to finish —unless the High Court is prepared to state its reasons in writing: in that case, it can make an order to the contrary."

297 **His Excellency the President**:—"Do you wish to speak again?"

The Hon'ble Pandit Madan Mohan Malaviya:—"Just a few words, my Lord. My Hon'ble friend Mr. Jinnah has made the first part

of this amendment quite clear. As regards the second part. The words in the proviso 'The Court shall make an order to that effect' are followed by the clause 'unless for reasons to be recorded in writing it thinks fit to make any other order'. Now, as it has been pointed out the Court will not be given the reasons upon which the Advocate-General would want the transfer of a case, and yet the Court will be required to pass an order as demanded by the Advocate-General unless it gives reasons why it should pass a different order. Are you placing the Court in a fair position? You say that it must pass an order as demanded by the Advocate-General, and that if it chooses to pass a different order, it must give reasons in writing for doing so, but you at the same time provide that the Advocate-General shall not be required to state the reasons upon which his application shall be based. That will not be fair to the Court."

His Excellency the President:—"Do I understand that the Council are willing that the Hon'ble Mr. Patel's amendment shall be put to it as amended by the Hon'ble Pandit Madan Mohan Malaviya, because if so, I will put the amendment in that form. The amendment will then run as follows:—

'That in the proviso to clause 6, for the words 'the Court shall' the words 'the Court may' be substituted and the words 'unless for reasons to be recorded in writing it thinks fit to make any other order' be deleted.'

The motion was put and the Council divided as follows:—

Ayes—10.	*Noes—34.*
The Hon'ble Sir Gangadhar Chitnavis.	The Hon'ble Sir Claude Hill.
Pandit M. M. Malaviya.	" Sir George Lowndes.
Mr. R. Ayyangar.	" Sir Thomas Holland.
Mr. B. N. Sarma.	" Sir Sankaran Nair.
Mr. V. J. Patel.	" Sir William Vincent.
Mr. M. A. Jinnah.	" Sir James Meston.
Maharaja Sir M. C. Nandi.	" Sir Arthur Anderson.
Mr. G. S. Khaparde.	" Mr. W. A. Ironside.
Rai B. D. Shukul Bahadur.	" Babu S. N. Banerjea.
" Mr. K. K. Chanda.	" Dr. T. B. Sapru.
	" Sir Verney Lovett.
	" Mr. H. F. Howard.
	" Sir James DuBoulay.
	" Mr. A. H. Ley.
	" Mr. H. Sharp.
	" Mr. R. A. Mant.
	" Sir Godfrey Fell.
	" Mr. F. C. Rose.
	" Mr. C. H. Kesteven.
	" Mr. D. de S. Bray.
	" Lt.-Col. R. E. Holland.
	" Surg.-Genl. W. R. Edwards.
	" Mr. G. R. Clarke.
	" Mr. H. Moncrieff Smith.
	" Mr. C. A. Barron.
	" Mr. P. L. Moore.
	" Mr. T. Emerson.
	" Mr. E. H. C. Walsh.
	" Mr. C. A. Kincaid.
	" Sir John Donald.
	" Mr. P. J. Fagan.
	" Mr. J. T. Marten.
	" Mr. W. J. Reid.
	" Mr. W. F. Rice.

The amendment was therefore negatived.

The Hon'ble Mr. G. S. Khaparde:—"My Lord, I had better read out the amendment first: It is that in the proviso to clause 6 for the words from the word 'make' to the words 'any other order' the following words be substituted:— 4-44 P.M.

'Make such order as it deems fit and shall order the expenses of the person charged, his witnesses and counsel to be paid by Government.'

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"The amended proviso would run as follows :—

'Provided that if the Advocate-General certifies to the Court that it is, in his opinion, necessary in the interests of justice that the whole or any part of a trial shall be held at some place other than the usual place of sitting of the High Court, the Court shall, after hearing the accused, make such order as it deems fit and shall order the expenses of the person charged, his witnesses and counsel to be paid by Government .'

The gist of my amendment is that if this application is made by the Advocate-General to the High Court and if the High Court accepts the recommendations of the Advocate-General and orders the case to be tried elsewhere, then the expenses that will accrue to the accused for going there and getting all his witnesses there and getting his lawyers there and all those things, those should be borne by the Government. The Court in making that order may also make a similar order. The authority for this is, as correctly guessed, the Irish Prevention of Crimes Act of 1882. I think I had better read the other portion of the section; the first part was read out to the Council by the Hon'ble Sir George Lowndes showing what the law in Ireland was. If the Court complies with the request of the Advocate-General then clause (2) of that section which reads as follows should apply :—

'The Lord Lieutenant shall from time to time provide for the payment, if an order is made under this section respecting the trial of any person, of the reasonable expenses of such person coming to the place at which, in pursuance of such order, he is to be tried in any case where he was admitted to bail and also of the witnesses required for the defence of such person, and certified by the Court before whom he is tried to be so required.'

It means that if the Advocate-General's application succeeds and the venue is transferred, then the expenses which necessarily will have to be incurred by the accused, if he is free in going there (if he is not free the Government takes him free of charge), the expense of his witnesses and his lawyers will have to be provided for. I think, one reason for this provision is that this application may not be lightly made. Supposing a person was being tried in Bombay; he might have friends there; he will be able to arrange easily for his defence and his witnesses may be living there. If they take the trial in the Punjab and say 'The offence might have been committed in Bombay, but it is better to try him in the Punjab', then in that case if the Court agrees to it, the Court should also say to the Government 'You pay the expenses which are incidental to this transfer.' The accused's lawyer has to go to the Punjab, his witnesses and so on. I think this is intended both for the protection of the person charged and also for the protection of the Government itself so that an application will not be made lightly, more especially since no reasons are to be assigned. It is to be merely a certificate, and in giving that certificate he need not give his reasons. I propose that the Court may make such order as it thinks fit and provide that if the case is transferred that provision should be made for the payment of his witnesses and pleaders and so on. This is in accordance with clause (2) of section 6 of 45 and 46 Vict., c. 25, and to me appears to be designed for the protection both of the Crown as well as of the accused, and I trust that this Council will accept this proposal as it is very good indeed, more especially since it came to be very nearly accepted in one part, but unfortunately it missed the mark ; let me see if this will succeed now."

The Hon'ble Sir James DuBoulay :—"My Lord, I am afraid that Government must oppose this amendment. It is divided into three parts, namely, the question of first the person charged, secondly, his witnesses and thirdly, his counsel. Mr. Khaparde has quoted the Prevention of Crimes Act. It has been referred to frequently to-day ; and Mr. Khaparde referred to it in justification of his proposal for the payment of expenses. I do not think he will find anything in the Crimes Act about counsel or about witnesses. It is limited so far as I can see to 'the expenses of such person coming to the place at which in pursuance of such order he is to be tried, in any case where he was admitted to bail'. It refers only to his personal expenses. No ! I see there is also provision for the payment of the expenses of witnesses. But may I point out that under clause 7 of the Bill the Criminal Procedure Code applies to proceedings under this Part; and under the provisions of the Code the expenses of witnesses are paid; so that in the matter of witnesses there is no necessity to make any

special provisions. So far as the payment of counsel goes, I think I am right in saying that, when a man is tried for his life, in every province of India arrangements are made by order of the High Court—and we had considerable correspondence in the Home Department on this subject with Local Governments—arrangements are made that, if a man is too poor to provide his own counsel, the Court should arrange for somebody to defend him. There is nowhere any suggestion in the Code that special provision for the accused's expenses should be made, and Government do not think that in this respect a man charged with revolutionary crime is entitled to be treated with any greater tenderness than in the case of ordinary offences."

The Hon'ble Mr. Srinivasa Sastri :—"There is some difficulty, my Lord, as I think in understanding the meaning of the amendment. This is how it is. The Court shall after hearing the accused make such order as it deems fit and shall order the expenses of the person charged, his witnesses and counsel to be paid by Government. Is this expenditure to be incurred by Government in the case of any order favourable or otherwise, even when actually refusing transfer of the venue of the Court? That is the meaning of the Hon'ble Mr. Khaparde's amendment. I think it is in excess of his own intention as expressed in his speech."

The Hon'ble Sir George Lowndes :—"That is, I take it, the meaning of the clause as amended by Mr. Khaparde."

The Hon'ble Mr. G. S. Khaparde :—"I am very glad to hear that under the Criminal Procedure Code these expenses of the witness will be ordinarily paid, and if the man is poor and unable to defend himself then Government will engage a pleader for him. I only wanted to make it clear so that it might come in here and not get ignored, this being a special enactment. I know that there is a section that the Criminal Procedure Code may apply in all cases in which it is not inconsistent with this This payment is not part of the procedure; it is part of the grace or general consideration that is shown to a man because the law always presumes a man to be innocent until he is proved guilty. So, if I am assured that that will apply here, I am content."

The Hon'ble Sir James DuBoulay :—"I am not sure whether the Hon'ble Member understood what I said; it was that the rules of the High Courts make provision that where a man is tried for his life the Court shall provide him with a lawyer if he is too poor to afford one. That is the rule of the High Courts now. In this particular case the Chief Justice has power to make rules; he will no doubt make exactly the same rules in these as in other cases. I do not think that anything more than that is necessary."

The Hon'ble Mr. G. S. Khaparde:—"Then, if a man is to be transported for ten years, the poor man will get nothing at all?"

The Hon'ble Sir James DuBoulay :—"Exactly as at present."

The Hon'ble Mr. G. S. Khaparde :—"Well, I humbly submit that, considering that this is a special enactment and a special procedure, this concession may be given, and if I am assured that the Chief Justice will deal with this part of the case also and prescribe some scale on which payment will be made to enable the poor man to defend himself, then I shall be content. Otherwise, of course, I will take the general chance. That is what I have to submit."

The motion was put and negatived.

The Hon'ble Rai Bahadur B. D. Shukul :—"My Lord, I beg to move my amendment which runs as follows :— 4-54 P.M.

'That in the proviso to clause 6 the words from 'nor shall' to the end of the proviso be deleted'.

"The clause will then run as follows :—

'The Court may sit for the whole or any part of a trial at such place or places in the province as it may consider desirable :

'Provided that if the Advocate-General certifies to the Court that it is in his opinion necessary in the interests of justice that the whole or any part of a trial shall be held at some place other than the usual place of sitting of the High Court, the Court shall, after hearing the accused, make an order to that effect, unless for reasons to be recorded in writing it thinks fit to make any other order. It shall not be necessary for the certificate of the Advocate-General to be supported by any affidavit.'

"My Lord, this clause has already been discussed, so I do not intend to detain the Council very long. I do not approach the question from the lawyer's point of view, I look at it from a commonsense point of view; to me this proposal seems to be quite anomalous. I think it is not fair to the judges that the Advocate-General should not state the reasons for having given the certificate. It is equally unfair to the accused that he should not know the reason why there should be a change of venue. I, therefore, think that the Advocate-General should give his grounds so that the High Court may be in a position to form an independent opinion as to where the case should be finally tried and why. With these words I beg to move this amendment."

The Hon'ble Sir George Lowndes:—"As there are some more amendments on this same subject it might save time if the movers spoke to them now."

His Excellency the President:—"Yes, because if the amendment is lost, I should have to rule them out of order."

The Hon'ble Mr. G. S. Khaparde:—"I have a similar amendment which runs as follows:—

'That in the proviso to clause 6 the words from 'nor' to the end of the proviso be deleted'.

"My reason for proposing this is that I think it is a little hard that the Advocate-General should not state his reasons for not granting a certificate. The accused will not know why the change is made."

The Hon'ble Rao Bahadur B. N. Sarma:—"My Lord, I beg to move my amendment which runs as follows:—

'That in the proviso to clause 6 the words 'nor shall' to the end of the proviso be deleted'.

I have already said what I have to say on the point."

The Hon'ble Sir George Lowndes:—"My Lord, I regret I cannot accept the amendment moved by my Hon'ble friend Mr. Shukul. The clause in the Bill, as drafted, only says that the Advocate-General cannot be compelled to state the grounds of his application. There is no doubt that in ordinary cases he will be able to state them and indeed he will be most anxious to do so. There is very good reason why he should want to do so in order to convince the Court. In every case where he can he will do so. But there may be cases in which it will be impossible for the Advocate-General to state the grounds. Such a case is conceivable. Suppose at the place where the trial is to be held the accused are actually preparing to murder a witness. In such a case it is not very desirable to disclose his knowledge of the conspiracy, and in that case he will merely grant the certificate. In the section of the Irish Act on which this is modelled the certificate of the Attorney-General is conclusive. He has merely to state that in his opinion it is desirable that the place of trial should be changed, and it is changed because of that certificate. We have adopted the provisions of the English Act, but have made it more favourable to the accused and have given the Court discretion to make any order it thinks fit, but we are not going to compel the Advocate-General, who corresponds to the Attorney-General in Ireland, to state the grounds on which he gives his certificate."

The Hon'ble Rai Bahadur B. D. Shukul:—"If the High Court is not in complete possession of the grounds on which the certificate has been given, how is it possible for the Court to form an independent opinion as to where the place of trial should be, and inasmuch as the accused does not know the reasons why the usual place of trial as was specifically recommended has been altered he is precluded from challenging the propriety of their certificate

strongly. Further, it may not be convenient for him to secure witnesses for his defence at the altered place, and he will, therefore, be put to grave inconvenience if the place is changed to the one recommended by the Advocate-General, a fact which would be worth considering."

The motions were put and negatived.

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I put my amendment which runs as follows:—

"That the following be added to the proviso to clause 6:—

'Where there is no Advocate-General, the Court may of its own motion or on being moved by either party and after hearing the accused when it acts of its own motion or on the application of the prosecution direct that the whole or any part of the trial shall be held at any place other than the usual place of sitting of the High Court'.

"My Lord, I put this amendment because there is an Advocate-General only in Presidency Towns. The clause as drafted refers to the certificate of the Advocate-General; so that it presumes there is an Advocate-General. This clause, as it stands, is no doubt drafted on the clause in the Irish Crimes Act, but in Ireland there is one Attorney-General. In any case I don't see how provinces like the Central Provinces or the Punjab, for instance, are to be dealt with, and that is why I have provided in my amendment that the Court shall act on its own motion or on motion by either party. This completes the process that is indicated in the clause, and I trust the amendment will commend itself to the Hon'ble the Law Member."

The Hon'ble Mr. V. J. Patel:—"Your Excellency, I regret I cannot see my way to support the Hon'ble Mr. Chanda. I think ample provision exists. The first part is wide enough. If he will look at it, he will see it says—

'The Court may sit for the whole or any part of a trial at such place or places in the province as it may consider desirable'.

"This makes it clear that there is no difficulty about the matter, and I hope therefore he will withdraw his amendment."

The Hon'ble Sir William Vincent:—"May I explain in the first place there is, as far as I know, no such officer as an Advocate-General in Ireland, so it is unlikely we got the expression from the Irish Act. There is, however, an Attorney-General and a Solicitor-General. The Hon'ble Mr. Patel is quite right in his statement about this amendment and further, if the Hon'ble Mover will refer to section 4 (*l*) of the Criminal Procedure Code, he will see that in provinces in which there are no Advocates-General, the term includes Government Advocate and persons appointed to carry out the duties of an Advocate-General. The definitions in the Code apply to the Bill.

"I hope, therefore, that the Hon'ble Member will see that there is nothing in his amendment and that he will withdraw it. As a matter of fact, there is in every province either an Advocate-General or a Government Advocate. I assure the Hon'ble Member that there is nothing in his amendment."

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, there is, no doubt, some officer performing the functions of the Advocate-General, and in some provinces, but as we shall see later, the Advocate-General has certain functions to perform and which only exclusively belong to him."

The motion was put and negatived.

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I beg to move the following further proviso to clause 6:— 5 P.M.

'Provided further that—

(*a*) if the trial or any part of it be transferred by the Court as aforesaid on the application of the prosecution or on a certificate by the Advocate-General, or on its own motion, the accused, if on bail, shall be entitled to his reasonable travelling or other expenses necessitated by such transfer. The Court shall have power in all cases to impose such terms as to cost and other matters as appears proper to the Court, when ordering such transfer; and

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(b) the accused shall have the right of moving the Court to direct that the trial or any part of it be transferred in the same manner and the Court after hearing the prosecution, may then pass such order as appears proper to it'.

"As regards the first part, I submit that if the case is transferred by the Court on the certificate of the Advocate-General and if the accused is on bail, all his reasonable travelling and other expenses should be paid. There was on this point another amendment by my Hon'ble friend Mr. Khaparde, but it was more ambitious as he wanted the expenses of the counsel also to be paid. I submit I restrict my suggestion to a small matter. My amendment is in accordance both with precedent and justice. If the case is transferred at the request of the prosecution, there is no reason why the accused should not be compensated and paid the expenses if he is on bail, and I say that the inherent power which the Courts possess of passing any orders regarding terms as to costs and other matters should not be fettered. Finally, I say that though the accused would have the right of asking that the trial of any part of the case should be held in some other place, I do not see why you should try to curtail the inherent power of the Court which it has of dealing with such applications."

The Hon'ble Sir James DuBoulay:—"My Lord, both these amendments have already been negatived in substance. In regard to the first of them the Hon'ble Mr. Khaparde suggested in moving a previous amendment that the Court should order the expenses of the person charged, his witnesses and counsel to be paid by Government, and the Hon'ble Mr. Chanda in the present amendment has suggested a provision that the accused, if on bail, should be entitled to his travelling expenses if the trial be transferred. In this matter of expenses, Mr. Chanda says that he now restricts his suggestion to a small matter; Government opposed the larger proposal and will now restrict its opposition to the smaller suggestion, but must still oppose. I don't think there is any reason for following the Irish Bill in this particular matter.

"As regards the question of the Court being moved by the accused, it has not been argued at any great length, but it does seem to me that the reasons for moving for these transfers are the general interests of justice. You will find that the explanation is given by the Rowlatt Committee, where they point out that witnesses brought to Calcutta or other great cities are exposed to great inconvenience and difficulties and labour under a sense of alarm and confusion in entirely novel surroundings. It is really from that point of view, the prevention of witnesses from being terrorised and in the interests of the administration of justice that this provision has been made: it is not in the interests of the accused persons but in the interest of justice. There is, therefore, no reason for permitting the accused to have the right of moving the Court in such matters and Government cannot accept the amendment."

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I do not think I have anything more to add. I only want that the power of the Court should not be interfered with."

The motion was put and negatived.

The motion that clause 6, as amended by the Select Committee, stand part of the Bill was put and agreed to.

The Hon'ble Sir William Vincent:—"My Lord, I move that clause 7 stand part of the Bill."

The motion was put and agreed to.

The Hon'ble Sir William Vincent:—"My Lord, I move that clause 8 as amended by the Select Committee, stand part of the Bill."

5-13 P.M. **The Hon'ble Mr. Kamini Kumar Chanda**:—"My Lord, I beg to move the following proviso to clause 8:—

'Provided that the accused shall have the right of cross-examining any prosecution witnesses if he so wishes before the framing of any charge without prejudice to his right of cross-examination after the framing of the charge.'

"I think, my Lord, this provision ought to be inserted. It is exactly in accordance with precedent, as both in trials of warrant cases and in commitment proceedings this power exists. But in practice it is very rarely resorted to by the accused. But it sometimes happens that questions put to a witness directly after his examination-in-chief may help the Court to find that there is really no reason to proceed further in the matter, and it results in the saving of time and public money. It also saves the accused from harassment and expenses.

"With regard to the remarks made by the Hon'ble the Home Member, I may inform the Council that I have known cases where a Magistrate refused to allow this right of cross-examining a witness at this stage, and the High Court strongly commented upon it. So when there is room for doubt, I think the point should be made clear, so I am strongly of the opinion that this provision should be inserted."

The Hon'ble Sir William Vincent:—"My Lord, the Hon'ble Member wishes to insert this amendment to the clause, although he thinks that the right which it provides will never be exercised .

The Hon'ble Mr. Kamini Kumar Chanda:—"Very rarely."

The Hon'ble Sir William Vincent:—"That the right will be exercised very rarely. Well, if that be so it does not seem worth while at all to insert the provision. As a matter of fact I take a rather different view. I believe that in all these cases the right of cross-examining witnesses before a charge is framed is always admitted when it is desired by the pleader for the defence, and this is certainly so in the provinces of Bengal and Bihar and Orissa with which I am familiar. The practice has always been so and it has been very definitely laid down by the Calcutta High Court. I will just quote one ruling here:

'Opportunity to cross-examine a witness for the prosecution should be given to the accused if they so desire even though the charge may not be framed'.

"There are other rulings exactly to the same effect, so that really the accused is given an ample opportunity of such cross-examination under the Criminal Procedure Code which applies to trials under the Bill.

"There is no necessity to make the change which the Hon'ble Member seeks to adopt."

The Hon'ble Mr. Kamini Kumar Chanda:—"I am not quite sure that what the Hon'ble the Home Member says will be followed. You find cases reported in Calcutta in which the Magistrate refused to give the accused this right in this matter, and as we cannot be sure that it always will be done, I think it should be stated clearly. You are making a special procedure and I see no harm in making this point clear."

The motion was put and negatived.

The motion that clause 8 of the Bill, as amended by the Select Committee, stand part of the Bill, was put and agreed to.

The Hon'ble Sir William Vincent:—"My Lord, I move that clause 9, as amended by the Select Committee, stand as part of the Bill."

The Hon'ble Mr. G. S. Khaparde:—"This is a small amendment, not so much to add to the law as to make it clear. It is that in clause 9, after the word 'necessary' the words 'for the attendance of defence witnesses or' be inserted before the words 'in the interests of justice'. It was pointed out to me that the words 'in the interests of justice' include the necessity for the attendance of witnesses, but sometimes I have seen that these

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witnesses are not allowed either because it would cause delay or for some other reason. So I submit that it should be stated clearly in the section that at least one or two opportunities will be given to the accused to secure the attendance of witnesses. If he cannot secure the attendance of his witnesses by two adjournments the Court may proceed, and that is all that is intended by my amendment."

The Hon'ble Sir William Vincent:—"My Lord, the Hon'ble Mr. Patel has also, I think, an amendment on the same clause. It might save time if he will speak to it."

The Hon'ble Mr. V. J. Patel:—"I rise to support the amendment of my Hon'ble friend Mr. Khaparde. I have given notice of a somewhat similar amendment. It was no doubt pointed out to us in the Select Committee that the words 'in the interests of justice' would meet our objection. We however feel some doubt about it, and after all it is better to make clear by specified words that, if the Court is of opinion that postponement is necessary to enable the accused to produce his witnesses, it should postpone the case. The words are 'The Court shall not be bound to adjourn any trial'. What we want is that the Court should be bound to adjourn if it is necessary to enable the accused to get his witnesses produced. I therefore support the amendment moved by my friend Mr. Khaparde."

The Hon'ble Sir William Vincent:—"My Lord, in the first place I wish to repeat in regard to this amendment that I think Members of this Council sometimes forget that trials under this Part will be before three High Court Judges. When the last amendment was discussed, we were told, 'Oh! cases have been known in which the cross-examination of witnesses has not been allowed before charge.'

"My Lord, these cases will not be tried before a Subordinate Magistrate, and I do not think that the Hon'ble Member could name any case or suggest any case in which a Judge of a High Court had refused a reasonable opportunity for adjournment for the purpose of calling defence witnesses. The fullest discretion is left to the Court in the clause as it stands; the Bill merely says that the Court shall not be bound to adjourn save in the interests of justice or as provided in the preceding clause. Where a person deliberately, to defeat the ends of justice, either keeps his witnesses out of the way or puts in an enormously long list of witnesses, not *bonâ fide* with the intention of examining them, but merely to delay proceedings, in such cases it is right that the Court should not be bound to adjourn. I think that a Court of three High Court Judges would always adjourn if it was thought that there was any possibility of injustice to the accused."

The Hon'ble Mr. V. J. Patel:—"Why then is this clause necessary?"

The Hon'ble Sir William Vincent:—"I ask the Council to believe that three High Court Judges will behave in a reasonable manner and give an adjournment when it is required. The Hon'ble Member has asked me why this clause is necessary. It is necessary in view of the procedure prescribed by section 257 of the Criminal Procedure Code. It may be said that it is possibly unsafe to vest a similar discretion in the hands of subordinate courts, but it can be safely left in the hands of three High Court Judges."

His Excellency the President:—"Mr. Khaparde, do you wish to reply."

The Hon'ble Mr. G. S. Khaparde:—"No reply."

The motion was put and negatived.

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The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord the amendment I beg to move is:— 5-26 P.M.

"That to clause 9 the following be added:—

'The accused shall be entitled to get copies of the depositions and exhibits, free of cost, to prepare his line of defence'.

"This is a very small matter to the State, but it is of very great importance to the poor man who is on his trial. He will only have 14 days' time to get copies and prepare for his defence, and it may be that he may not be able to pay for the cost of these things in time, and this means extra cost. I submit that it will be a bare act of justice to let him have these copies free of cost."

The Hon'ble Sir William Vincent:—"My Lord, I confess I can see no reason why an accused person who is being tried before this tribunal of three High Court Judges should be more favoured in the way of obtaining copies free of cost than any ordinary prisoner. My sympathies do not run so much with these men. They are in the same position as any ordinary accused persons and, if, I may say so, I know of no precedent for the amendment of the Hon'ble Member either in the Act of 1908 or anywhere else. Where accused persons—and the provisions of the Code are not illiberal in that respect—do get copies free of cost, the same facilities will be provided to persons accused under Part I, but I confess I can see no reason for showing them any special indulgence."

The Hon'ble Mr. Kamini Kumar Chanda:—"I think there is a provision in the Code under which accused persons are sometimes allowed copies free.

"In regard to the first objection of the Hon'ble the Home Member that there is no special reason why these men should get copies free, I submit that there is a special reason. You are taking away from them rights which other persons possess, namely, the right of commitment, the right of trial by jury and the right of appeal, and I think it is only bare justice that they should get something for this."

The motion was put and negatived.

The Hon'ble Mr. V. J. Patel:—"My amendment was not proposed."

"That to clause 9 the following words be added:—

'or to enable the accused to secure the attendance of his witnesses'."

His Excellency the President:—"But it is exactly the same amendment as Mr. Khaparde's. I would ask the Hon'ble Member to compare the two. I must rule that they are both the same and that the one has been disposed of by the other."

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I beg to move—

"That after clause 9 the following clause be inserted:—

'9A. If there is any record of any previous statement or evidence or of substance thereof, of any prosecution witness made to any authority including the police, the accused shall be entitled to have copies of such evidence, statement or substance on applying for the same.'

"I must make a special appeal to the Hon'ble the Law Member to have sympathy with me in this matter, my Lord. Here you find that the man will have nothing to go upon in his trial. Of course, so far as the prosecution is concerned, before they call a witness, they must have got some information as to what he is going to say; they must have some statement from him recorded either by a Magistrate or a police or some other officer. Is it not essential in the interests of justice that this fact should be known by the accused? In an

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ordinary Sessions trial he has the statement of the man in the commitment proceedings, and if the man makes another statement he can compare the two and see if the man is telling the same story or a new one. But there is no chance now of his knowing anything at all. Is it, or is it not, necessary, in the interests of justice, that these facts should be known to the accused? Therefore, my appeal to the Hon'ble the Law Member is that he should view this amendment sympathetically and allow the accused copies of statements in the possession of the Crown. Of course, if a statement is made before a Magistrate, the accused has a right absolutely to have it and he is entitled under sections 145 and 157 of the Evidence Act to cross-examine a witness on that statement. If the statement was to a police officer, the matter is slightly different. Before the present Code of Criminal Procedure was enacted in 1898, it was always allowed that statements recorded by the police should be given to accused persons. Then, my Lord, it came out that an Inspector-General of Police in Bengal, in order to evade this, issued a circular to the police to the effect that, when making investigations, they were not to record the statements of witnesses in the diary under section 161, but to incorporate them in the diary under section 172. The diary under section 172 being a privileged document, the accused person had no right to call for it or to inspect it, but it was ruled under the old Act that he had a right to get any statement to the police which had been recorded in the diary under section 161. It was tried to evade that by this circular to which I have referred, and this coming to the notice of the High Court in a well known case, Mr. Justice Trevelyan ruled that, if information given by any witness is incorporated by the police in the diary under section 172, the accused was entitled to that even then and he strongly censured the conduct of the police. He says: 'I can hardly believe that any responsible officer of Government would issue a circular like this to evade the rules of this Code'. (This is a case reported, I believe, in 20 Calcutta.)

"After that the Code was amended and the law was amended on this point. The present law (section 162) is that if a man is called as a witness and if, as a matter of fact, he was examined by the police, then the accused person shall be entitled to ask the Court to send for that document and, after inspecting it, if the Court thinks fit in the interests of justice that a copy should be given to the accused, a copy was to be given. This is the present law, and, my Lord, when this law was enacted, there was considerable discussion in this Council about this point, and, with the leave of the Council, I should like to place this matter before it. This is what the Hon'ble the Law Member at that time, Sir Mackenzie Chalmers, said:—

'It is a question of discovery. When a witness is called, you are always entitled to impeach the credit of that witness by showing that on a previous occasion the witness made a statement inconsistent with what he is now saying in the witness-box. That is English law, and I believe it to be Indian law also. There is no question about that, but the point is this. In order to show that the witness on a previous occasion made a statement which was inconsistent with what he is saying now you must have some material to go upon, and there has been on the construction of the old section a conflict between the decisions of the Courts'.

"Then, later, he says:—

'We have only provided that in certain cases, and subject to the discretion of the Court copies may be given of the supposed statements of a witness where the witness is himself called. It is clear that, when a witness is called, his name, identity and the substance of his information is to be given to the Court, and therefore there is no objection to any previous statement made by that witness being accessible to the accused . . . . Very often in this country, and by no means rarely at Home, witnesses do make inconsistent statements at different times. They may make them from folly; they may make them from bad motives; but it is most important to the accused when he is being pressed by the evidence of a witness to be able to show that the story told by the witness in the box is not the story told by the witness when first he was asked about the affair when his memory was fresh and the facts were fresh in his recollection, and when he had no time to think out the consistent story which he afterwards tells. I can recollect several cases at Home in which I have been concerned where the inconsistent statements made by witnesses were most material evidence in favour of the accused. I remember one case where a woman was undoubtedly robbed and maltreated; there was no doubt of the fact. She first accused one man, and then she accused another, and I am by no means sure that either of the two persons she accused was the real person who assaulted her.'

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"Then, my Lord, in reference to one remark of the Law Member, the then Lieutenant-Governor, Sir John Woodburn, put this question:—

'The Hon'ble Mr. Chalmers used the expression that he hoped that the discretion would be freely used by the Magistrates. I do not know exactly what he meant by that: whether he meant that they should not give copies of the papers or that they should freely do so'.

"Mr. Chalmers replied, 'I meant that they should freely do so'. In a considerable portion of Bengal and the whole of Assam such statements are always given in Sessions trials, and whether the statements are recorded in full or the substance only is recorded, the Sessions Court always allows copies to be given to the accused. It is a matter of justice that this should be done. Under these circumstances, my Lord, I submit and I earnestly pray that the Hon'ble the Home Member will be pleased to accept this amendment."

The Hon'ble Sir William Vincent:—"My Lord, where there are records of any previous statements or of evidence given against the prisoner by any prosecution witness, copies will be available to persons accused under this Part just as much as they are to any ordinary accused, and there is no reason for making any change. As to police papers, the position under the ordinary law is that where a witness is called for the prosecution and his statement has been taken down by the police, the court may, if it thinks expedient, give a copy of it to the accused when the statement may be used to impeach the credit of the witness. I submit that this is all that is required in the present case. The Hon'ble Member has told us that Judges always give these copies. Why should we suppose that three High Court Judges will not do so, unless it is in the public interest to refuse them? But in the case of these political conspiracies particularly, there are instances in which statements made to police officers cannot in the public interest or with due regard to the protection of the lives of those who make them be given; and it is in those cases only, I imagine, that copies of the statements of such witnesses will not be furnished to the accused. I cannot see why any difference should be made in the matter of furnishing copies of these statements made to the police between these young revolutionaries and any person accused before the ordinary courts."

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I do not ask for any differentiation. What I say is that in the case of these revolutionaries the present law should be followed. If there is any matter that ought not to be furnished to the accused on political grounds, by all means keep that back; but I say so far as it implicates the accused, why should not the accused know what the previous statement of a witness against him was? In the Court the witness may make a totally different statement, and, I submit, my Lord, that in a case like this it is very necessary that the accused should be given a copy of the previous statement."

The motion was put and negatived.

The motion that clause 9 of the Bill, as amended by the Select Committee, stand part of the Bill was put and agreed to.

The Hon'ble Sir William Vincent:—"My Lord, I move that clause 10, as amended by the Select Committee, do stand as part of the Bill."

The motion was put and agreed to.

The Hon'ble Sir William Vincent:—"My Lord, I move that clause 11 do stand part of the Bill."

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I beg to move the following amendment:— 5-45 P.M.

'That in clause 11 the words 'its proceedings or' be omitted; and the following proviso be added to the same clause:—

'Provided that the Court is unanimous on the point'.

"The clause would then run thus :—

'The Court, if it is of opinion that such a course is necessary in the public interest or for the protection of a witness, may prohibit or restrict in such way as it may direct the publication or disclosure of any part of its proceedings, provided that the Court is unanimous on the point'.

"I do not propose to make a speech on this amendment. All that I ask is that, if it is thought necessary to keep any portion of the proceedings from the public, the opinion of the Court on this point should be unanimous."

The Hon'ble Sir William Vincent :—"My Lord, I submit that if the Court considers that the whole of the proceedings should be held *in camera* in the public interest or for the protection of any of the witnesses, they should have that power. It is very doubtful—I cannot put it higher—whether every Court has not got that power at present. Many here will remember that the question was discussed at great length recently in the superior English courts. Nor is there any reason why in a matter of this kind, where the public interest or the safety of a witness are concerned, the opinion of the majority should not prevail, or why if one Judge thinks differently from two others, his opinion should have greater weight. I must certainly oppose this amendment."

The Hon'ble Pandit Madan Mohan Malaviya :—"My Lord, the reason why the opinion of one Judge should prevail if he is of opinion that the proceedings should not be *in camera* is that the Legislature and law courts have long recognised the advantages of a trial which is open to the public, where all that the Court is doing can be watched by the public. If one of the Judges constituting a bench is not satisfied that there is any reason for shutting out the public from watching the proceedings, I submit that that is sufficient justification for requiring that the proceedings shall be public. My Lord, I fear that the Hon'ble the Home Member does not recognise the value of the safeguard of a public trial in the case of India and Indians to the same extent that he would do perhaps in the case of other countries. But the circumstances here are peculiar, and the remarks to which he referred—the remarks, I suppose, in the House of Lords, made on this subject—would apply with greater force to the circumstances obtaining in India. In this legislation before us you are adopting a very special procedure which considerably curtails the safeguards for liberty which the subjects of His Majesty at present enjoy. If you must do so—we urge that you should provide a safeguard against the exercise of the power except under circumstances where there shall be a guarantee at least to the mind of the person accused—that the matter has been properly considered by all the three Judges, and that they are unanimously of opinion that there is reason for the proceedings being *in camera*. Where one of the Judges is doubtful, I submit the matter stands on an entirely different basis, and the Council will be wise in requiring that where such is the case, the proceedings should not be conducted *in camera* and that the trial should be in open court .

The Hon'ble Sir George Lowndes :—"I should like to point out that this clause of the Bill is not dealing with the question of trials *in camera*. The Hon'ble Pandit's remarks therefore are, I submit, beside the point."

The Hon'ble Pandit Madan Mohan Malaviya :—"I should like, my Lord .

The Hon'ble Sir George Lowndes :—"My Lord, I object to my Hon'ble friend replying; he has already spoken."

The Hon'ble Pandit Madan Mohan Malaviya :—"I only want an explanation, my Lord. I want an explanation of the section, if I may. I want to know whether my friend is right in what he has said. I want to draw the attention of Council .

His Excellency the President:—"No, no. The Hon'ble Member has already spoken once; he can make any personal explanation but nothing more than that."

The Hon'ble Pandit Madan Mohan Malaviya:—"May I make my meaning clear? The language of this section is 'the Court may in certain circumstances prohibit or restrict in such way as it may direct the publication or disclosure of its proceedings or any part of its proceedings.' I should like the Hon'ble the Law Member to tell us whether that will not enable the Court to shut out people and members of the public from entering the hall or the room where the Court may be holding its trial."

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, the last portion of the clause will include such a case. I think it can be construed as meaning that persons shall not be present at the time the trial is going on; otherwise it would be disclosing the proceedings. By using such words as 'disclosure of its proceedings' we clearly take away the right of the public being in Court when the Court may say that the trial shall be held *in camera*. I think it is a very dangerous power to give. It ought to be made clearer; I mean the last portion of the clause should be amended so as to make the sense clear; otherwise it will be construed that a trial may be held *in camera*."

The motion was put and negatived.

The motion that clause 11 stand part of the Bill was put and agreed to.

The Hon'ble Sir William Vincent:—"My Lord, I move that clause 12, as amended by the Select Committee, do stand as part of the Bill."

The Hon'ble Mr. Surendra Nath Banerjea:—"My motion is that 'clause 12' be deleted. My Lord, this clause introduces an innovation in the existing Criminal Procedure Code so far as this particular Bill is concerned. It provides for the examination of the accused as a witness. Under the existing law the Court may ask the accused such questions as the Court may think fit and the accused is at liberty to answer them or not as he pleases. But under this section the Court will explain to the accused that he is entitled to be examined as a witness, and if he agrees he will be examined as a witness, which means that he will be put on his oath, that he will be cross-examined and, a minor point, he will take his place in the witness-box. My Lord, this, I understand, is the law of England, and it is the law of the civilised world; but we must bear in mind that the conditions in India and the conditions in England are very different; furthermore when we have a perfect system of criminal procedure as you have in England, there will be time enough to have an innovation of this kind engrafted on our criminal system. Apart from these general considerations it seems to me there are certain directly relevant facts which make it highly undesirable that this clause should have a place in the Bill. Unless at least one important provision is changed the accused will not be permitted to have the benefit, the assistance, of a pleader. Therefore the accused will be standing alone in the dock, the Court will put him questions and he will be left to his own unaided judgment."

The Hon'ble Mr. V. J. Patel:—"The pleader is there, see Part I of the Bill."

The Hon'ble Mr. Surendra Nath Banerjea:—"Well be it so. I withdraw that part of the statement. It does not make any difference so far as my contention is concerned. Then he is placed in an unenviable position, he will be subjected to cross-examination and altogether, the conditions are such as in the case of an ordinary person will make this position exceedingly unfavourable. It seems to me, my Lord, that this is a somewhat dangerous innovation. As regards this particular clause of the Bill the High Courts have not been consulted, no competent legal opinion has been obtained. I think before you introduce an innovation of this kind competent legal opinion ought to be consulted. Undoubtedly there were three High Court Judges on the Rowlatt Commission, but not High Court Judges from Calcutta, authorities likely to be

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more conversant with actual conditions existing. It seems to me further that before you introduce a clause of this kind in this emergent measure it is important that local opinion should be obtained and the High Court consulted. Moreover there is another general observation I do desire to make in this connection, and it is this. This may be good law or bad law, I know nothing about it. If it is good law it should be introduced, but the fact that it has found a place in such a highly unpopular measure as this will handicap it later on in its introduction into the substantive law of the land. I understand there is a proposal to introduce this into our Code of Criminal Procedure. If you do so I feel confident that will be creating prejudice against that particular section so far as it forms part of the substantive law of the land. Having regard to the fact that it is an innovation, and that it is not supported by competent legal opinion I think it is most undesirable to introduce the section. The Bill is unpopular, this section will make it more unpopular. I do not think in the interests of justice it is necessary. Therefore I beg that this section be deleted."

The Hon'ble Mr. V. J. Patel:—"My Lord, I will only add a few words to the arguments of my Hon'ble friend, Mr. Banerjea. I understand that in the Act for the prevention of crimes in Ireland there is no such provision, I think I am right. If you are going to follow the procedure laid down there, there is no reason why this provision should be inserted in this particular instance. The question was thoroughly discussed in Select Committee, and if I remember it aright, most of the non-official members were against the change proposed to be introduced. I hope the Council will see its way to support this amendment."

The Hon'ble Mr. G. S. Khaparde:—"I have an amendment which by a strange coincidence is in almost the same words, namely, 'That clause 12 be deleted'. I find that this provision of the law has come out of 61 and 62 Vict. c. 26. It was introduced into England and now it has come into our system. When this Act was introduced into England the law did not apply to Ireland. If it was good law, why should it not apply to Ireland? I tried to look up Hansard's Debates on this point but got mixed up. I believe that the Irish members protested in a body. The Irish people are excitable and it requires a very strong-willed man to stand cross-examination, more especially when that cross-examination is conducted in the presence of three High Court Judges. Government is able to engage the ablest persons at the Bar. It has been found that many innocent persons spoil their own case; they tell the truth but they tell it in such a way as to prejudice the case against them. Then again it has to be remembered that education has not advanced in this country as far as it has in Ireland. Another thing is that the people are excitable, so that they may commit some act. In a book which I saw the other day on examination of the questions of identification a crime was committed and a witness was called; one witness said 'this man was not there,' so the accused instead of staying quiet said 'Oh! thank God, there is one man that does not recognise me'. As Counsel explained this man was thanking God that there was one honest person who said that he was not there. A similar thing has happened in my own practice. The people with whom we have to deal are ignorant. Cross-examination is a very useful instrument, but it has to be in skilled hands; it is an instrument which is liable to be dangerous in wrong hands and to injure the person concerned. On the one hand the Government will have the ablest advocate at the Bar, whereas the man may not have any, unless he is treated as a pauper and the High Court thinks it necessary to provide him with one. I have come to the conclusion that this is a dangerous provision especially in a measure of this kind in which everything is being to a certain extent hurried. The charge against a man may, in these circumstances, be aggravated and he may commit some act or say something which he really never contemplated doing, and which may accordingly inculpate him. Therefore I say this provision should not find a place in this measure.

"So under these circumstances, I also move the same amendment that this provision should not find a place in an Emergency Act at any rate. These are the reasons why I put forward this amendment."

The Hon'ble Dr. Tej Bahadur Sapru:—"My Lord, the provisions of clause 12 of the Bill are to my mind of such far-reaching consequence that they require to be very carefully considered by the Council. My Lord, on the one hand, it is perfectly true that the accused is not compelled by clause 12 to offer to go into the witness-box. To use the words of this clause 'the Court shall inform the accused that he is entitled, if he so desires, to give evidence on oath on his own behalf and shall at the same time inform him, if he does so, that he will be liable to cross-examination'. On the other hand, you have the important fact to bear in mind that if in the exercise of his option he refused to offer himself into the witness-box according to one part of the section, although it will not be open to the prosecution to make his abstention from the witness-box a subject of any comment, yet taking the clause as it stands there is nothing to prevent the Court from coming to any conclusion that it likes having regard to the fact that he has abstained from going into the witness-box. My Lord, it is perfectly true that during recent years, it is perfectly true that some 20 or 23 years ago the English law on the subject was changed; but let us not forget that it was changed after centuries during which it was recognised as a fundamental principle of English jurisprudence that the accused cannot be shown into the witness box, that it is for the prosecution to make out its case against the accused. Now, my Lord, I do not think it would be right or fair to hold that the conditions in regard to this matter in this country are exactly parallel to those that obtained in England, say some 20 years ago or that obtain at the present moment. My Lord, my impression is that an attempt was made when the Irish Coercion Bill was introduced in Parliament to get a similar provision incorporated into that law and I speak from recollection, subject to correction by any member of the Council, that at that time the strongest possible objection was taken to provisions of this character in that Bill. It was probably, as my Hon'ble friend Pandit Malaviya corrects me, and I think it really was in the year 1888. However, whether it was at that time or at any subsequent time, I am speaking only from memory, the fact remains that at that time the strongest possible opposition was shown by the lawyer members and not only by the lawyer members, but also by other members in Parliament to provisions of this character. Now, my Lord, it is perfectly true that in some cases the only evidence that the accused can give in his own defence is his own evidence, and it may be that the whole case of the prosecution may fall to the ground if the accused goes into the witness-box. The explanation that he may give in support of his own defence may be so convincing that the Court may be justified in discarding all the evidence of the prosecution. I am perfectly aware of that and I realise that it may have been in many cases that the accused may be let off solely upon his own evidence, but at the same time the risk is enormous; but surely it cannot be contended that there is not an equally great amount of risk of even a perfectly innocent accused spoiling his case and strengthening the case for the prosecution by going into the witness-box and submitting himself to such a cross-examination at the hands of a clever cross-examiner. 6 P.M.

"My Lord, speaking as a lawyer, I must say that I have no strong prejudices one way or the other, but to be absolutely frank, I should not like an experiment of this character to be tried in a measure like this in the absence of important opinion which we should collect before we undertake to introduce a provision of this character in our law. My Lord, in the course of my speech yesterday, I said that the Bill should have been referred to the High Courts and to other Judges who have got to administer justice from day to day. My Lord, when it is borne in mind that an important provision like this is sought to be introduced in a measure of this character, I submit in all humility the force of my remarks yesterday becomes quite apparent. We are entitled to know what is exactly the view which Judges of the High Courts in various parts of the country, which Sessions Judges, District Magistrates and other Magistrates and lawyers having considerable practice on the criminal side of the courts hold, what opinion these gentlemen hold in regard to a matter like

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this. We have got absolutely no evidence of that character. It may be that if you consult the High Court Judges and Sessions Judges and criminal lawyers, you may find your position infinitely stronger than it is now, but in the absence of any evidence to that effect, I certainly think that you are taking an extraordinary risk in trying an experiment of this sort. This question can be raised fairly and clearly when the revision of the Criminal Procedure Code comes to be considered; it will be time enough then for us to consider the bearing of the English law upon Indian conditions. But at the present moment when you are introducing a special measure like this, I do not think that it is right that you should introduce a provision of such a far-reaching character. Therefore, my Lord, without, as a lawyer condemning it on legal principles or without as a lawyer supporting it on legal principles, I say the experiment is one which requires to be tried very carefully, and certainly, this is not the time when you can try an experiment of this character."

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, I strongly support the amendment which has been moved by my Hon'ble friends Messrs. Banerjea, Patel and Khaparde. My Lord, I think it will be unwise, inexpedient and dangerous to introduce section 12. In the minute of dissent which I submitted to the Select Committee, I made my position with regard to this section so clear that I cannot do better than draw attention to what I said there. The first attempt that I know was made before the laws were reformed in England, and there used to be a provision that an accused person should not only have the option, but that he should be compelled, on penalty of physical suffering, to undergo cross-examination. That was regarded as a barbarous provision and was set aside, and for a long time, for some centuries as the Hon'ble Dr. Sapru has said, the law would not allow an accused person to be subjected to cross-examination or give him even the option of being examined on oath. In 1888, a Bill was introduced in Parliament which sought to introduce this change, namely, that an accused person may be examined on oath on his own application or at his own wish. There was opposition to the proposal, public opinion was strongly divided, and the Bill did not pass into law. The next attempt was made in 1898, and it was only then that the law was changed. Since that time an accused person in England is entitled to be examined on oath on his own application, and if he so offers to be examined on oath, then he is liable to be subjected to cross-examination. Now, my Lord, that is how the matter stands so far as England is concerned. Opinion was divided as to the utility and wisdom of this measure even in England; but the experience of the last twenty years seems to have satisfied English Judges and lawyers that this was a wise provision to adopt, so far as accused persons in England were concerned.

"But, my Lord, for the purposes of the present discussion we have to remember that we here unfortunately are not yet in the position of England. We have to remember with regret that the system of the administration of justice which obtains in India is not yet what it should be. For thirty-five years and more educated Indians have urged one simple reform in the administration of justice, namely, the separation of the judicial and executive functions, and we have not been able to persuade the Government of India to carry out that very simple elementary reform. We have also not been able to persuade the Government of India to introduce a system of trial by jury all over the country and to let the opinions of the fellowmen of the accused have their due weight in influencing the decisions of Judges, in deciding questions affecting their lives and liberties. In other respects, too, the administration of justice in India does not stand on the same footing as it does in England. I think of all the institutions that Englishmen have reason to be proud, and they have got many such, the administration of justice among them is one of which they may well be very, very proud. We wish that we had the same system of justice introduced in India. When it has had its work for some time I do not think there will be a voice raised against a proposal to incorporate into our Criminal Procedure Code the provision of the law by which accused persons are now offered the opportunity of being examined on oath. But in order to consider this we should look at this question at this stage, and I would invite the attention of this Council to what was said on the subject in England

in 1888 and even in 1898. I will first take the later period. In the discussions that took place in the House of Commons in April 1898, on the Bill to which my Hon'ble friend has referred, and which became 61 and 62 Vict. c. 36. Speaking on the Bill, Mr. Lyttleton, M.P., said :—

'The very moment a man begins to cross-examine another an atmosphere of heart is generated. How many men can engage in an ordinary argument on an important subject without showing warmth? I think there are rather few in number. But what is cross-examination? It is argument conducted by men in public, with all the excitement that publicity can give. It is done by a man who is exhibiting his powers before others who may afterwards employ him; and is it not too sanguine to expect that such a man would conduct a cross-examination of a prisoner with that calmness and moderation with which English prosecutions are now conducted? May I give one quotation from the opinion of Lord Justice Collins, who has allowed me to use his name in this matter? My Hon'ble and learned friend has said that he did not believe that Judges would be carried away by the duties imposed on them by this Bill. Allow me to read the testimony of one of the Judges on this point, which I am sure will have great weight. There is no Judge on the bench more respected, esteemed and admired than Justice Collins. He says :—

'My chief objection to the proposed change is that, I feel certain, it will greatly alter the present relations between the Judge and the prisoner. It seems to me inevitable that, if it should become the practice for the prisoner to give evidence in every case, the Judge will in most cases have to put questions in the nature of cross-examination himself. He has to do so now very frequently in cases under the Criminal Law Amendment Act. Counsel who conduct ordinary cases are frequently inexperienced, and a crucial question often has to be put by the Judge . .'

'If this becomes the ordinary practice, as I think it must, if the proposed change be made, it must shake the prisoner's confidence in the absolute impartiality of the Judge, which is so valuable a feature in our present system. It cannot but tend to alter the attitude of the Judge himself actually and apparently; and I should regard this as a great public mischief, and deprecate any change which might make it possible, unless I feel sure that the certain benefits would more than compensate.'

" Mr. Lyttleton went on to say :—

'This is the opinion of a Judge who has tried these cases himself, and who has no prejudice one way or the other. He has had great experience of both systems. Is it not a deplorable thing for the Government of this country that the Ministry should seek to alter one of the most impressive functions of Government which now exhibits the Judge and the prosecuting counsel—at any rate the Judge—not as the enemy, but as the friend of the poor and miserable? Would it not be a deplorable thing that a system so generous and humane should be so changed to one in which it would be the business and the duty of the Judge to put questions such as Lord Justice Collins suggests, and as the result of which he would not appear to the poor and miserable in a Criminal Court as a friend, as he is now generally regarded, but as an embittered enemy?'

"That was the view taken by sober, sensible men who spoke against the Bill. But the majority were for it and the change was introduced. Now, as I have said, experience has shown that in England the provision has worked well. But the circumstances of England and India are different. In order to judge of the suitability of the proposed law to India, I would rather invite comparison—I regret to do so, both for the sake of Ireland and India—with Ireland and draw attention to the opinions of the Irish Members.

" The controversy raged over the desirability or otherwise of the change for fifteen years before this provision found a place in the Statutes of England. The Irish Members as a body fought for fifteen years against the introduction of this provision in Ireland, and, my Lord, they eventually succeeded. It was because the discussions in the session of 1888 had shown that they were unanimously opposed to the introduction of this provision in Ireland, in the Bill which was introduced in 1898, and which became law, there was a distinct clause which stated that the Act should not extend to Ireland. The reasons which led Irish Members to oppose the extension of the change to Ireland were stated by Mr. Morley in the debate which took place in 1888. He said :—

The Hon'ble Sir George Lowndes :—"May I ask where the Hon'ble Pandit is quoting from?" 314

Pandit Madan Mohan Malaviya:—" Hansard, Vol. CXXIV, pages 95, 96. Mr. Morley said :—

'There was no difference of opinion as to the utility of the measure. They were all agreed that to allow prisoners to become witnesses when they wished to do so would be a humane and beneficent change. But he could not agree that all the reasons which existed for the application of the Bill to England must necessarily exist in the case of Ireland also. The Hon'ble and learned Solicitor General said that there was no distinction between the cases'.

" Mr. Morley inquired if that was so why the Hon'ble gentleman was not prepared to extend the same laws to Ireland which were in existence in England; why he was not prepared, for instance, to extend self-government to Ireland, and he went on to say :—

'The Hon'ble and learned gentleman had not dealt effectively with the argument of the Hon'ble and learned Member for North Longford (Mr. T. M Healy) that the atmosphere of an Irish Court was not supposed by the people of Ireland to be favourable to the prisoner'

" Unfortunately, my Lord, the same remark applies to the atmosphere of many a court in India. Mr. Morley went on :—

'The argument of the Hon'ble and learned Member for North Longford proved that there was all the difference in the world between the operation of a measure in Courts like the English Courts and its operation in Courts such as the Hon'ble and learned Member and his friends believed theirs to be. This was a Bill in favour of the prisoner; but the Government were going to apply it in a country, where it would inevitably be regarded—whether rightly or wrongly—as being hostile to the prisoner. The effect of the measure upon Irish opinion would be the very opposite of that which was justly claimed for it in England. The Hon'ble and learned Member for Inverness (Mr. Finlay) had argued with great plausibility that the supposition that there was animus in the mind of a Judge against a prisoner was all the more convincing reason why they should give the prisoner the chance of exculpating himself by giving evidence. But it must not be forgotten that if the contention of the Hon'ble and learned Member for North Longford were correct, and if there was animus in the mind of an Irish Judge and a strong animus in the prosecuting counsel, the prisoner under this Bill would be exposed to the risk of a bitterly hostile cross-examination, and it will enforce on him a very serious disadvantage. It appeared to him (Mr. John Morley) the sheerest pedantry to insist that because this was a wise and desirable change in itself and in this country, they were, therefore, bound to force it upon Ireland against the wishes of her Representatives, and against the opinion of so staunch a partizan of the Government on the Opposition side as the Right Hon'ble and learned Member for Bury. The Right Hon'ble and learned Member for Bury was free from the suspicion of motive which attached to the Irish Members below the gangway and he had shown that he was strongly opposed to the change itself; and on both these grounds his opinion was entitled to the greatest weight. Would the Government insist upon extending the legislation to Ireland against the wish of all the popular Representatives of that country, and against the opinion of a partizan of their own who was most competent to give an opinion upon that subject? He wished to underline the argument of the Hon'ble and learned Member for the City of Durham (Mr. Milvain), which he was surprised the Government did not see the force of. They considered they were engaged on the difficult task of restoring law and order in Ireland. They said they had now got a state of opinion in Ireland much more favourable than it had long been to the maintenance of law and order and respect for the administration of the law. They must admit, therefore, that it was most undesirable politically to arouse fresh jealousy by introducing a single element of suspicion or irritation into the administration of the Criminal Law in Ireland at a moment like this; and yet they must equally admit that this would be the effect of the provision which, with deplorable tenacity, the Government insisted upon extending to Ireland'.

That was said, my Lord, in 1888; substitute India for Ireland in the passage, and see how well it applies to the case we are considering

The Hon'ble Sir George Lowndes:—" May I ask once again that the Hon'ble Pandit will give me the reference; volume 124 is in 1885?"

The Hon'ble Pandit Madan Mohan Malaviya:—" 1888, I gave the year."

The Hon'ble Sir George Lowndes:—" I understood the Hon'ble Member to say volume 124."

The Hon'ble Pandit Madan Mohan Malaviya:—" Volume 324, pages 95 and 96.

"My Lord, other members expressed the same view that this legislation should not be forced upon Ireland, and the result was that the Bill fell through then, but when the Government introduced the Bill which became law in 1898, the Government themselves dropped the idea of extending its provisions to Ireland. This is our position. I submit that the proposal to introduce an important change like the one in question in this exceptional and drastic legislation is all the more unwise. If the change is a good one, you should wait and see that our courts are improved and that the administration of justice stands on a footing anything like what it stands in England. Let there be a greater feeling of confidence that the prisoner has all the constitutional safeguards of life and liberty provided secure to him and do not introduce such a change in a measure which is on the face of it admittedly, professedly going to curtail the constitutional rights and safeguards of life and liberty.

"My Lord, the basis for this legislation is to be found in the same Rowlatt Committee's Report to which we are indebted for the other important provisions of the proposed Bill. Let us see what the Rowlatt Committee have said on this point. They recognised that the introduction of this provision was an important departure; they also recognised that it was a departure which should not be introduced into the ordinary courts, and that it should not be introduced unless safeguards were provided against its abuse. This is what they said :—

'No doubt only an experienced court should try cases under these conditions in order to make sure that an ignorant prisoner does not misunderstand his position and is not unfairly dealt with. This safeguard is ensured when the cases come before three Judges of the highest rank, and, upon the whole, we think the provision should be introduced. If it were a question of its general application we should, having regard to the above-mentioned considerations, be against it'.

"Now, my Lord, the Rowlatt Committee clearly stated that in their opinion this was not a provision to be introduced in ordinary circumstances. They would only agree to its introduction, as they say, when there would be all the safeguards provided against an ignorant prisoner misunderstanding his position and being unfairly dealt with. They thought that the provision of a Special Tribunal, consisting of three High Court Judges, supplied these safeguards. With due deference to the members of the Committee, I beg to differ from them.

"The remarks to which I have drawn attention, the opposition which the Irish members waged for fifteen years against the introduction of a similar provision into Ireland, and their success in resisting its introduction into that country have a lesson for us. And in view of the existing state of things in this country, and of the fact that this is a very special and a very repressive piece of legislation in which it is sought to incorporate the provision in question, I beg your Excellency's Government to reconsider the situation and to decide to drop it. My Lord, I have acknowleged that the change has been beneficial in England. Yet let us not be in a hurry to introduce the most up-to-date improvements of only some departments of national existence in England, unless and until we introduce corresponding improvements in other departments of national existence and administration. Many such improvements are yet to come in particular in the administration of justice. Therefore until they come, until a feeling of greater confidence in that administration is developed and spread far and wide in the country, I hope the Government will see the unwisdom of enacting a provision like the one which is incorporated in section 12."

The Hon'ble Mr. C. A. Kincaid :—"My Lord, I do not wish to waste the time of the Council unnecessarily, but this is a question on which I feel very deeply, and I also venture to hope that this Council will attach some little weight to the experience of one, who has been for 23 years a judge. Lovers of the 'Pickwick Papers'—and I hope that this includes the majority of this Council—will remember the trial of the suit which was brought against Mr. Pickwick for breach of promise. Now the first thing that strikes a lawyer about that case is that neither the plaintiff nor the defendant went into the witness-box. The next thing that strikes a lawyer is that had Mr. Pickwick gone into the witness-box and told the Court exactly what had happened, it is perfectly certain the jury would have believed him, and that he would have 6-27 P.M.

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won his case. But he did not go into the witness-box and so he lost his case, and, as far as I remember, there was a verdict against him for £700.

"There was an ancient and deep-rooted objection in the Laws of England to parties in civil and criminal cases going into the witness-box. It was thought that perjury would result from this, and that there would be so much perjury that it would become a national calamity. The first breach that was made in this position was, I think, in 1838 when a law was introduced by which parties in a civil case could give evidence. However, it was still held that in criminal matters it would be very much better for an accused not to go into the witness-box It would be impossible for him not to perjure himself. The next breach in this position was when the Criminal Law Amendment Act was introduced. This dealt with complaints made by women against men for sexual offences and it came to be generally understood that such offences were never likely to be committed in anybody else's presence, and that therefore it was necessary that an accused person should go into the witness-box in order to prove his innocence. This change proved a success and, finally, the whole position was carried by the Criminal Evidence Act of 1898, and now it is the law of England that if an accused person wants to do so he can give his view of the case to the jury.

"Well, my Lord, a good many quotations have been made from the debates on that Act by the Hon'ble Mr. Malaviya. I have had the advantage of reading those debates, an advantage which, I regret, the Hon'ble Mr. Malaviya has not enjoyed; and I think it is impossible for any one who reads those debates not to see that the weight of argument of those who supported the Bill was far superior to the weight of argument on the side of those who objected to it. The only person who really spoke with any force against it was Mr. Lyttleton from whose remarks the Hon'ble Member has read some quotations

The Hon'ble Pandit Madan Mohan Malaviya:—"My friend is not quite right. I have read several of the volumes and I have got some of them with me."

The Hon'ble Mr. C. A. Kincaid:—"If I do the Hon'ble Mr. Malaviya an injustice I apologise. At any rate, as far as I read the reports of the debate, it seemed to me that Mr. Lyttleton's speech against the Bill was the only one of any importance. On the other side, there was the great authority of Sir Edward Clarke and he quoted the opinions of Lord Halsbury, Lord Russell, Sir Henry Poland, Sir George Lewis, the greatest criminal experts of the time, and they all agreed that innocence was the one sure shield—that if a man was innocent and told the truth in the witness-box, he could baffle the most skilled cross-examiner. And Sir Edward Clarke ended that speech by saying: 'Why should you deny to an accused person on a capital charge the privilege of explaining exactly what happened, a privilege you accord to the merest scullery maid before dismissing her'.

"The Hon'ble Mr. Malaviya has, my Lord, said that that law has proved a success in England. I may mention that when I was appointed by the India Office some years ago to instruct the Solicitor General, Sir Rufus Isaacs, for the extradition of one Savarkar, to be tried in connection with the murder of Mr. Jackson, the argument made by Savarkar's counsel that told most with the Court of Criminal Appeal was that if Savarkar was tried in India he would not be allowed to go into the witness-box and tell the Judges his own version of the case on oath.

"My Lord, I will give another personal experience, if I may, to this Council. Some months later, I was going through a course of legal study and I went to one of the minor courts of London, and I remember quite well—indeed I shall never forget it all my life—the case of a boy there who was charged with having committed some theft. Witness after witness came up and swore that they had seen the boy there. He had no witnesses, but his Counsel put him into the witness-box, and I can assure this Council that, when he had left the witness-box, there was not one person present in Court who was not convinced of his innocence. He was not an educated man; he was simply an

ignorant boy from the street; but, as Sir Edward Clarke said in the debate, his innocence proved a sure shield against the most skilful cross-examination.

"There is one great authority I will quote in this connection and that is the authority of Mr. Justice Hawkins. Mr. Justice Hawkins, in his 'Recollections' says :—

'At the time of these debates, I felt great misgivings as to the passing of this Act, but I should like to put it on record that I have never yet seen a case, where an innocent person went into the witness-box and gave evidence in his own behalf that it did not do his case the greatest possible good'.

"My Lord, I have mentioned the case where I myself went into a small London Court and saw an accused person go into the witness-box and be acquitted. I was so struck by that case that directly I was appointed Judicial Secretary on my return to India and from that time onwards I did all I could to urge the Bombay Government to alter the general Statute law; and I am glad to say the other day when the Government of India consulted the Bombay Government about alterations in the Criminal Procedure Code, the Government of Bombay on my advice and on the advice of some other senior judicial officers asked the Government of India to bring in a provision into the Criminal Procedure Code similar to that which has been embodied in this Bill. My Lord, only one question now remains, and that is the question of Ireland. The Hon'ble Mr. Malaviya asked why this provision could not be introduced in Ireland. Well, my Lord, I have read the debates of the Irish Members with the greatest possible attention, and I think the objection of the Irish Members was not to the principle involved. It was quite a different one. They urged before the House of Commons that they could not trust the administration of justice in Ireland. The one person whom they objected to was Mr. Peter O'Brien. He was either Counsel for the Treasury or Attorney-General for Ireland, I forget which; but when I was in Ireland as a boy there was not a man, woman or child that did not call that man 'Peter the Packer.' I do not know whether it was justified, but whenever an Irish Catholic went into the dock, Mr. Peter O'Brien managed to get a jury of twelve good men and true who were all Protestants and mostly from the North-West of Ireland. With this man's extraordinary success in getting together juries to his liking, an Irish Catholic was not likely to have a fair trial if he went into the dock. And that was the reason why the Irish Members objected to the introduction of this provision. It had nothing to do with the principle of the thing. It was due to the peculiar political atmosphere of Ireland. But no such prejudice exists in regard to the Judicial Department in India, especially the Judges of the High Court, who will constitute these special tribunals. The Hon'ble Dr. Sapru has spoken in the most flattering terms of the High Courts of India, and I think I may say that their impartiality and fairness are universally recognised."

The Hon'ble Khan Bahadur Mian Muhammad Shafi:—"My Lord, in order to enable some of us to express a definite opinion, I should like to know what exactly is the position of Government with regard to the amendment which four or five of us have proposed to the clause as amended by Select Committee, *i.e.*, whether they are prepared to accept the amendment that the Court shall not draw an inference adverse to the accused by reason of his failure to give evidence on oath. It seems to me that that is a matter which is weighing on the minds of a large number of non-official Members. If we were in a position to know the definite position of Government in this matter, and whether they are going to accept the amendment that it shall not be open to the Court also to draw an inference adverse to the accused by reason of his omission to go into the witness-box, then possibly the position of affairs may be different. With your Excellency's permission I should like to ask the Hon'ble the Home Member to enlighten us with reference to this."

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The Hon'ble Sir William Vincent:—"I am quite prepared to make a statement on this point. The Government of India propose to follow the English law absolutely."

The Hon'ble Mr. Surendra Nath Banerjea:—"My Lord, may I suggest adjournment of the debate now, having regard to the fact that it is a most important matter and will need prolonged discussion."

His Excellency the President:—"Well, Mr. Banerjea, I was going to inform the Council that I propose to sit until we finish with amendment No. 77. We are now at amendment No. 48, and for the convenience of Council I propose to adjourn at a quarter to eight and resume again at nine."

The Hon'ble Khan Bahadur Mian Muhammad Shafi:—"My Lord, in view of the answer which has been given by the Hon'ble the Home Member to my question, I am compelled to say that with all my predilection in favour of the retention of this clause, that answer compels me to support the motion placed before the Council by the Hon'ble Mr. Banerjea. I do not think I need add to what has been said by other Hon'ble Members. The apprehension in the minds of most Hon'ble Members who are opposed to the retention of this clause is that although the clause provides that the counsel for the prosecution shall not comment on the conduct of the accused in not going into the witness-box there will be an unconscious bias in the mind of the Judge which may influence him against the accused by reason of the accused's conduct, and I submit that unless and until the safeguard that five of us have suggested, that such an inference shall not be open to the court to draw, we are not prepared to accept the retention of the clause."

6-40 P.M. **The Hon'ble Sir George Lowndes:**—"My Lord, the reliance that has been placed by some Hon'ble Members on the reference to the opposition of Ireland would make it possible to deal with this motion very lightly, though I am far from desiring to do so. The Hon'ble Pandit referred to the diffidence felt by Irish Members on the subject. Another Hon'ble Member—I think it was Mr. Patel or Mr. Khaparde—asked 'If it is a good law for England, why is it not a good law for Ireland?' I wish either of those Hon'ble Members could put that question to an Irish audience. I wish that the Hon'ble Pandit could do so, and he would see what reply he would get: I could almost laugh when I think what an Irish audience was in the years to which the Hon'ble Pandit refers, the years between 1882 and 1918,—believe me, I know much more what it was like than the Hon'ble Pandit can know. Those were the years when Ireland would accept nothing from the Government. Those were the years when the Irish Party looked at the hand that gave and not at the thing that was given. Any one who uses that as a serious argument against applying this provision to India, that the Nationalist Party would not have it for Ireland, shows a complete ignorance of Irish politics. The Council have heard my Hon'ble friend Mr. Kincaid, who is an Irishman. I am not an Irishman by birth, but I have some knowledge of what politics in Ireland were in those years, and I entirely endorse all that he said. The refusal of Ireland to accept it was for very definite political reasons and due to the opposition of the Irish Nationalist Party, who would accept nothing from the Government. But let us get away from the Irish argument and let us treat this thing not lightly but seriously. Now, what is the object of every rule of evidence? Is it not to get at truth? Not to get at the truth only when it is favourable to an accused person—not certainly to get at the truth only when it is favourable to the prosecution; but the object of every rule of evidence is to get at truth. Well that is what I want in supporting this clause. When I was addressing this Council on the introduction of the Bill, I said that legislation of this sort was a thing very distasteful to me, though in this particular instance I was satisfied with its necessity. That may incidentally be an answer to certain remarks that fell from my friend the Hon'ble Mr. Jinnah yesterday. But when I said that legislation of this sort was distasteful to me, I was making no reference whatever to clause 12 of this Bill, which has had my most earnest and sympathetic support throughout. I regret greatly to see India lagging behind the rest of the civilised world in this matter. I am not talking about Ireland, or about England only. Is it known to this Council that every self-governing Dominion—and remember it is the replica of a

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self-governing Dominion that Hon'ble Members are always asking to become—that every self-governing Dominion has this provision; that it is the law of most of the Crown Colonies, and the law of nearly every State of America? I need not refer to the French law. It is perfectly well known to all of us. The Hon'ble Mr. Khaparde suggested that the reason why it did not apply to Ireland was because the Irish are very excitable. Well, that applies at least equally to the French, and yet the system of examination of an accused person in France is far more drastic than it has ever been in England or in any part of our Colonies. Therefore what we are pressing on Members of this Council—I hope pressing on their reason—is the adoption of something which is practically the law of all the rest of the Empire, and with regard to which India alone is lagging behind. The proposal rests on this basis. It is no good for the Hon'ble Pandit to get up here and read extracts from Mr. Lyttleton's speech in 1898. That was 20 years ago.

"He read, naturally enough, only from a speech of the opposition; he did not make any reference to the number of great speakers who spoke on the other side

The Hon'ble Pandit Madan Mohan Malaviya:—"I rise to a point of order, my Lord. The extracts I read from Mr. Morley's speech distinctly stated that he recognised the utility of the measure and I repeatedly said more than once that English lawyers dealing with the measures had said that it worked well. My Hon'ble friend need not be angry because I quote from authorities who are opposed to his views."

The Hon'ble Sir George Lowndes:—"My Lord, I am not angry; I may have spoken with some warmth; but all my life I have tried to put forward the two sides of a question fairly."

The Hon'ble Pandit Madan Mohan Malaviya:—"So have I."

The Hon'ble Sir George Lowndes:—"I say again the Hon'ble Pandit quoted from one important speech which was made on one side; he has not quoted from any single one on the other; and I tell him that there are volumes upon volumes of them so that he would have had plenty to choose from. I say it is not the very least good coming and reading to this Council extracts from an opinion which was given in 1898, not mentioning the opinions which were given on the other side when it is admitted by every lawyer in England now that this has proved to be a most salutary reform in the law of evidence

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, I must rise to a point of order. I leave it to your Lordship whether I have not made it clear in my speech that English lawyers had expressed opinions against the Bill, but that in the last 20 years their experience was that they were satisfied that the Bill had worked well. If I have, I would ask my Hon'ble friend to withdraw the remarks that he has made."

The Hon'ble Sir George Lowndes:—"I did hear the Hon'ble Pandit make the remark, to which he has referred, but I have not suggested he did not make it. What I have said is that in view of the fact that 20 years' experience of the new law has shown that it works very well in England, we should adopt it here, and that is why I say the opinions which were recorded in favour of it then should also have been quoted to Council. Well it is admitted by the Hon'ble Pandit and by everybody, I believe, that the 1898 Bill which has become the law of England has been a very great addition to the jurisprudence of the country. What I was trying to do in support of my argument was to establish that proposition. I started by saying that the object of a law of evidence is to try and get at truth. As I pointed out nearly every other part of the Empire except India has got this law, and it is now fully recognised, I am glad to say even by the Hon'ble Pandit, that it is a good law, that is to say, that it is a law which does help to get to the

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truth; and this, as I say again, is the one object of a law of evidence. It has been said that we have taken no—I forget what the exact words were—no competent legal advice, I think it was the Hon'ble Mr. Banerjea who said this. Is that quite true? We have got at all events so far as the general proposition goes some most competent legal opinions. We have the long debates in Parliament in 1898 when eminent lawyers declared that the measure would be a very valuable one; we have got the fact that it has been adopted in almost every other part of the British Empire. We have got the advice of this very strong committee who have recommended it, a committee containing not only an English Judge but an Indian Chief Justice and an Indian Puisne Judge, and I believe a very eminent member of the Bengal bar. They have recommended it not hastily or unthinkingly but after careful consideration and weighing the merits and demerits of the case. They have said that if it were a case of applying this rule to all the subordinate courts in India they would be against the proposal; but they say that having regard to the character of the tribunal before whom these trials will be held they have, as I read it, no hesitation in making this recommendation. Then it is suggested that it is a great pity to try the experiment only in such a tribunal as this. It is said that we should wait till we get it in as an ordinary amendment of the Criminal Procedure Code. Surely the argument, if I may say so, is all the other way. Here is an opportunity of trying the provision, of which Hon'ble Members seem so doubtful, with an extraordinarily strong tribunal. Surely that is the way you would try it first; you minimise the risks. If the proposal were to apply it to the whole of India or make it a general law of evidence throughout India, having regard to the very different status of many local tribunals that have to deal with such questions, I quite agree that there would be a risk; but here we have a unique opportunity of at all events trying the effect of a rule which the experience of 20 years in England has shown to be peculiarly good, before a tribunal of the highest possible position and character. There will be no tribunal equal to it in India. We have never before had an original tribunal of three high court judges dealing with questions of this sort. Therefore, I suggest to the Council that so far from it being wrong in principle to try the experiment here, it is the best possible opportunity of doing so, if it is an experiment, if it is still in the experimental stage at all, and surely twenty years' experience in England takes it out of the experimental stage or at all events that is what I suggest to the Council. I believe it is known to some Hon'ble Members that proposals have been circulated with regard to an amendment of this nature in the Criminal Procedure Code Amendment Bill, and Local Governments and High Courts have had this matter under consideration. The Rowlatt Report too, as Hon'ble Members know, has been before the public, and been, if I may say so, very much in the public eye and the public mind. I think Mr. Banerjea told us yesterday, for eighteen months. I think that was a little bit of an exaggeration; it was published a year ago or something like that. Therefore it has been before the public with its recommendations for nearly a year

The Hon'ble Mr. Surendra Nath Banerjea:—"May I rise to correct the statement which has just been made by my Hon'ble friend? I said 18 months, but since the facts were pointed out to me I withdrew that statement, and I said that whether 18 months or 12 months did not in the slightest degree affect the argument which I had put forward, namely, that the circumstances had changed since the publication of the Rowlatt Report and therefore there was no justification for following entirely the recommendations of that report. The law must be suited to the circumstances. I think that represents it?"

The Hon'ble Sir George Lowndes:—"Exactly. I was only referring good humouredly to what my Hon'ble friend had said. The Report has been before the public for about a year, and it has been very much

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discussed in the public and I have not the very least doubt that eminent legal gentlemen, high court judges and practitioners, have been considering this clause very carefully. Then again, when it is said that no competent legal advice has been obtained, I look around this Council. Is there no competent legal opinion in this Council? I can count a dozen lawyers here at all events. Then there is really very little more to say about it. The truth of the whole matter is that Hon'ble Members mistrust the proposal because it comes in this Rowlatt Bill. It is a case of '*Timeo Danaos et dona ferentes.*' It is not that my Hon'ble friends really have any real doubts of the value of this thing as a test of evidence; they are content to refuse it because it comes in the Rowlatt Bill . .

The Hon'ble Pandit Madan Mohan Malaviya:—" My friend is misrepresenting us here when he says we have no honest doubts about it. He is misrepresenting us. "

The Hon'ble Sir George Lowndes:—" I have no doubt I am misrepresenting the Hon'ble Pandit; I do not pretend to read his mind. I say it is purely a case of fearing the hand of the giver. You fear a gift that comes from the Government; you fear it most because of its connection with the Rowlatt Bill. That is the real ground for it. Some at all events, I believe, in this Council are very recent converts to this distrust.

" I think I might have counted, if it had not come into the Rowlatt Committee's Report, on the support of a good many Hon'ble Members in this Council. Certainly, before the proposal was introduced into the Criminal Law Amendment Bill, several Hon'ble Members who are lawyers pressed it upon me very strongly and told me that it was absurd that India should lag behind in this respect. It would be a great advantage if we could look at this provision from the point of view of commonsense and reason. A man is charged with an offence, everybody can go into the witness-box and swear away his life, his honour and everything else. He is the one man whose mouth is shut, the one man who cannot give evidence. Are there not many cases where the only man can tell the court what really happened, is the man who is in the dock? Is it fair that you should deny him an opportunity of going into the witness-box and of telling you what happened? Yet this is what you are going to do in this Council .

The Hon'ble Pandit Madan Mohan Malaviya:—" You refused to allow him

His Excellency the President:—" The Hon'ble Member has spoken and must not interrupt."

The Hon'ble Pandit Madan Mohan Malaviya:—" I rise to a point of order. I want my Hon'ble friend to say whether he accepts

The Hon'ble Sir George Lowndes:—" I object to the Hon'ble Member interrupting me. He has only a right to do so to make a personal explanation."

His Excellency the President:—" The Hon'ble Member is entirely out of order in his remarks, and I must ask him not to make any more interruptions."

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The Hon'ble Sir George Lowndes:—"I was trying to say that it seems a little hard that all of you sitting round this Council, Indians and lawyers, should be deliberately denying to the man who is accused of an offence the right to go into the witness-box and declare his innocence. I am not compelling him to do so. I merely want to give him the right to give evidence. If this is to be rejected let it not be rejected by his own countrymen. But I wish that before it is too late Hon'ble Members will pause before they formally oppose this clause. Will you make it necessary for us by an official majority to carry this clause, will you deny every Indian if he is charged before a tribunal of this experience the right to go into the witness-box and give his own story of what happened? All I can say is, and I do so with all the earnestness at my command, that I hope Hon'ble Members will pause before they deliberately refuse this act of justice to an accused man. I have practised for many years in India, Hon'ble Members will concede that; I may have seldom prosecuted, but I have spent a considerable portion of my career in criminal sessions defending men of this country, and I believe that this is a provision of the law which we ought to have; that it is a provision which will enable truth to be attained and that where an innocent man is charged as he is charged in some cases, it will enable him to clear his character. Have my Hon'ble friends never heard the Latin *Magna est veritas et praevelebit.* If a man is innocent and goes into the box, I fully agree with Mr. Kincaid that truth will prevail. But you are denying him, you are refusing him the right to tell his Judges what really happened."

The Hon'ble Pandit Madan Mohan Malaviya:—"May I make a statement?"

The Hon'ble Sir George Lowndes:—"I think this is the sixth time the Hon'ble Member has attempted to speak. Our one object is to get the truth, and I think that all in this Council will believe that this is the only object that I have in view. I doubt if any one believes that my object in pressing this is to get an innocent man convicted. I do not believe at all events that there is any one in this Council who thinks so. If there is, let him get up and say it. To give an innocent man this opportunity will be an enormous advantage to him and one to which, I believe, every lawyer in this Council will concede his right. I have no hesitation in affirming my conviction that this provision will be a great improvement in the law so far as it will help us to get at the truth in criminal cases."

P M. **The Hon'ble Mr. Srinivasa Sastri:**—"We have heard a most interesting and lively discussion and may I add that it has been to me of the utmost profit and instruction. I wrote a dissenting minute in which I opposed clause 12. I have heard sufficient now which makes me think that perhaps I had better have supported clause 12. It is not usual for speeches to make converts in Council; we come here with our minds more or less made up, but having come into this Council with intent to do the accused in these cases all the justice possible, it occurs to me that the rule need not be followed in this instance. I am prepared, your Excellency, to change my mind. I do so with conviction and I will vote in favour of the retention of clause 12. I may say this that I have travelled in this matter in a direction contrary to that in which my Hon'ble friend and colleague Mr. Shafi has travelled. Mr. Shafi and I wrote dissenting minutes. Mr. Shafi would have clause 12, but after listening to the speech which we have just heard I go to the other side

The Hon'ble Khan Bahadur Mian Muhammed Shafi:—"My Lord, may I say that my learned friend is not entitled to make any such assumption. So far as clause 12 is concerned my position is the same as in Select Committee. By reason of the answer given by the Hon'ble the Home Member I said I could no longer support it."

The Hon'ble Mr. Srinivasa Sastri:—"My Lord, I am very glad to find myself in the excellent and encouraging company of the Hon'ble Mr. Shafi in this matter. It is a pity that the Hon'ble the Home Member has been unable to accede to our request in respect of the other change we propose. However I have heard sufficient, as I said, to make me a convert to the theory that perhaps when a man is really innocent he had best be allowed to go into the witness-box in his own behalf."

The Hon'ble Mr. Surendra Nath Banerjea:—"My Lord, I am sorry I am not able to follow my Hon'ble friend Mr. Sastri. I fear I am too old to be converted to new ways after having formed my conclusions upon the information placed at my disposal. I still think that the provision is a dangerous innovation, at any rate, it is a provision which has to be carefully thought out, in regard to which we ought to have more information than is at our disposal. My Lord, at the present moment I had in mind a name that I am not permitted to disclose. I had an opportunity of discussing this matter with him. He is a distinguished lawyer, I need not say more because I cannot disclose his personality, and as the result of that discussion, we both came to the conclusion that in the present circumstances of the country such a law would not be instrumental in eliciting the truth. I am entirely at one with the Hon'ble the Law Member that we ought to get at the truth, but our apprehension is that having regard to the class of prisoners in such cases the section would not help the elucidation of the truth. They would break down under the stress of cross-examination. They would not be able to tell the truth, in some cases they may but in most cases my fear is that they would not stand the stress of examination, and you may receive impressions which would be the reverse of it. It is this apprehension which fills the mind of our friends over here, and I venture to think that the general sense of the educated community would be one of suspicion and mistrust. My Hon'ble friend has referred to the attitude of suspicion and mistrust with which we approach the Rowlatt Committee's Report. This is absolutely true. We do approach that Report in an attitude of suspicion. That colours our views with regard to it. Can you seriously say that it should not be so having regard to the character of the recommendations, the drastic recommendations, the curtailment of personal rights which the Report recommends? Thus there is that attitude of suspicion and distrust, and, my Lord, it is because of this fact that I ventured yesterday to ask, to beg, to entreat your Lordship's Government to postpone the consideration of this Bill for a few months so that the public mind might be reduced to a more rational frame and we might be in a position to consider the whole case in an atmosphere free from prejudice which would be a waning prejudice as time went on. We do not think that the examination of the accused would be instrumental in eliciting the truth. And, my Lord, if that is the public sense, and if that feeling is repeated in the newspapers, in the great organs of public opinion, if that is voiced in this Council, I put it to your Excellency to say whether we ought not to respect that feeling. Here you are introducing an innovation, I will say with the best of motives, I do not for one moment question the intentions of the framers of that section. You have done it with the best of motives, but you are generous enough, I do hope and trust, to allow others to think differently from you, and permit honest differences of opinion between yourselves and those who may be your critics. We are afraid of the innovation, we think it is dangerous. We are of opinion that it would not elicit the truth. I will not refer to the Irish controversy, but that is the sentiment, the deliberate sentiment, of my educated countrymen, and with the exception of Mr. Sastri, no one here has given expression to any view other than that which I have put forward. Lawyers like Dr. Sapru have expressed their apprehensions; another lawyer like my Hon'ble friend Mr. Shafi is of the same opinion, and if Mr. Jinnah would speak, I do not know what he would have to say, and I take his silence as evidence that I have rightly interpreted his views. However it may be, here we have got lawyers in this Council Chamber, other men who are not lawyers, they are all Indians, of the same mind, of the same view, that this is a dangerous provision, and therefore we are right in pressing upon your Excellency's Government, despite my friend's conversion, to drop this provision of the Bill. The Bill is already

unpopular. Do not make it more so by having a provision of this kind against practically the unanimous sentiment of our educated countrymen."

The motion was put and the Council divided as follows :—

Ayes—14.	*Noes—37.*
The Hon'ble Mr. S. N. Banerjea.	His Excellency the Commander-in-Chief.
" Dr. T. B. Sapru.	The Hon'ble Sir Claude Hill.
Pandit Madan Mohan Malaviya.	" Sir Sankaran Nair.
Mr. R. Ayyangar.	" Sir George Lowndes.
Mr. B. N. Sarma.	" Sir Thomas Holland.
Mir Asad Ali, Khan Bahadur.	" Sir William Vincent.
Sir Dinshaw Wacha.	" Sir James Meston.
" Mr. V. J. Patel.	" Sir Arthur Anderson.
" Mr. M. A. Jinnah.	" Mr. W. A. Ironside.
" Maharaja Sir M. C. Nandi.	" Sir Verney Lovett.
Khan Bahadur Mian Muhammad Shafi.	" Mr. H. F. Howard.
Mr. G. S. Khaparde.	" Sir James DuBoulay.
" Rai B. D. Shukul Bahadur.	" Mr. A. H. Ley.
" Mr. K. K. Chanda.	" Mr. W. M. Hailey.
	" Mr. H. Sharp.
	" Mr. R. A. Mant.
	" Major-General Sir Alfred Bingley.
	Sir Godfrey Fell.
	Mr. F. C. Rose.
	Mr. C. H. Kesteven.
	Mr. D. de S. Bray.
	Lieutenant-Colonel R. E. Holland.
	" Surg.-General W. R. Edwards.
	" Mr. G. R. Clarke.
	" Mr. H. Moncrieff Smith.
	" Mr. C. A. Barron.
	" Mr. S. Sastri.
	" Mr. P. L. Moore.
	" Mr. T. Emerson.
	" Mr. E. H. C. Walsh.
	" Mr. C. A. Kincaid.
	" Sir John Donald.
	" Sardar Sundar Singh.
	" Mr. P. J. Fagan.
	" Mr. J. T. Marten.
	" Mr. W. J Reid.
	" Mr. W. F. Rice."

The amendment was, therefore, negatived.

7-14 P.M. **The Hon'ble Mr. Kamini Kumar Chanda** :—"I beg to move that for sub-clause (*3*) of clause 12 the following sub-clause be substituted :—

'(*3*) No inference adverse to the accused shall be drawn from his failure to give evidence on oath.'

"My Lord, I am aware that the clause as drafted is from the English Statute, but nevertheless I would respectfully urge that it should be amended on the lines I have suggested. The Hon'ble the Home Member has declared in emphatic terms .

The Hon'ble Sir William Vincent :—"May I explain that that was my personal view, and that I may have to defer my personal opinion to the views of others."

The Hon'ble Khan Bahadur Mian Muhammad Shafi :—"My Lord, that is most unfair to me; I was prepared to support the clause but for the reply to my question given by the Hon'ble Member and now he goes back on that."

The Hon'ble Mr. Kamini Kumar Chanda :—"I am thankful for the ray of hope that is given by the Hon'ble the Home Member's words. I do hope that the Government will be pleased to reconsider the matter and accept this very small amendment. If in the Hon'ble Home Member's personal

view he forms this judgment, I need not detain the Council at this late hour with any more words, and I move this amendment."

The Hon'ble Sir William Vincent :—" My Lord, as I said just now, I am afraid in an unwitting moment I expressed my own opinion on this matter, perhaps too readily, but it is obviously one's duty in these matters to defer sometimes to the opinions of others, and, in these circumstances, it is my duty to accept this amendment."

His Excellency the President :—" There are four or five amendments here in different words but implying more or less the same thing. I think it may be convenient if we were to leave this particular amendment over until we meet again at 9 o'clock, by which time the Hon'ble Member in charge of the Bill will have made up his mind as to the form he would prefer."

The Hon'ble Sir William Vincent :—" My Lord, it is scarcely for the Member in charge to make up his mind as to the form of words at a moment's notice."

The Hon'ble Mr. Kamini Kumar Chanda :—" I thank the Hon'ble Member for this kind concession for which I am most grateful, small as it is."

The Hon'ble Khan Bahadur Mian Muhammad Shafi :—" My Lord, I desire to offer my sincere congratulations to your Excellency's Government on the compromise which has been arrived at, a compromise satisfactory, I think .

His Excellency the President :—" Is that a personal explanation ?"

The Hon'ble Khan Bahadur Mian Muhammad Shafi :—" No, but perhaps your Excellency will allow me to say something about this amendment as a very similar amendment stands in my name, and I wanted to say a few words in support of it. Is it your Excellency's pleasure that that should be taken later on ?"

His Excellency the President :—" I think it would be more convenient if numbers 51, 52, 53 and 54 were to stand over until we resume at 9 o'clock and if that form of words could be settled."

The Hon'ble Sir George Lowndes :—" I suggest that it is not necessary to accept a form of words. Hon'ble Members always wish that amendments should be put into shape by us, and therefore if we accept the spirit of the amendment, my Department will put it into shape before the Bill comes up again. "

His Excellency the President :—" That is the usual practice ; perhaps that would meet the Hon'ble Member."

The Hon'ble Mr. M. A. Jinnah :—" May I know what the Hon'ble Member means by ' before the Bill comes up again'? "

The Hon'ble Sir George Lowndes :—" What ordinarily happens is that we have an adjournment in a long Bill after the Select Committee's Report has been considered, and then it comes up to be passed when the amendments have been put into shape. That is the usual practice, but I have no doubt we can deal with this particular one at 9 o'clock if Mr. Shafi wishes it. "

The motion that the principle of the amendment be accepted was put and agreed to.

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His Excellency the President :—" Mr. Patel's* amendment and Mr. Shafi's† and Mr. Shukul's‡ too, are covered by Mr. Chanda's. "

The Hon'ble Rao Bahadur B. N. Sarma :—" My Lord, I beg to move that in sub-clause (*b*) (*ii*) of clause 12 (*4*) the words from ' or the nature or the conduct of ' to the words ' the prosecution or ' be deleted. The words are ' or the nature or the conduct of the defence is such as to involve imputations on the character of the witnesses for the prosecution. Omitting them clause (*b*) would enact that an accused person, when he is in the witness-box, shall not be asked several questions, including whether he has a bad character, unless :—

' (*i*) proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged, or

(*ii*) witnesses for the prosecution have been cross-examined with a view to establish his own good character, or he has given evidence of his good character. '

" Your Excellency, ordinarily an accused person can adduce evidence of good character; then if he does adduce evidence of good character, of course evidence to the contrary may be adduced. All this is provided for in clauses (*i*) and (*ii*). What I am asking the Council to delete is the restrictive words qualifying the exemption provided for in clause (*b*) against the cross-examination of the accused about his bad character. That exemption should not be dependent upon a determination of the nature or the conduct of the defence. It would lead to very elaborate discussion as to whether the conduct of the defence is correct or incorrect, and whether the nature of the defence is such as justly to provoke this reprisal. Possibly the judge would be called upon at an early stage to state whether imputations are cast upon the character of the prosecution witnesses by reason of the nature of the defence. It would be undesirable that the Court should, before the conclusion of the trial, be asked to express an opinion as to whether the conduct of the defence is such as to expose the accused to this penalty of being cross-examined about character.

" I submit nothing would be lost if these words be omitted. Of course in the ordinary course of the trial the accused would put questions to the prosecution witnesses to shake their credit by affecting their character. That is a privilege which the Evidence Act provides for now, and every accused person must try to show that the prosecution witnesses are unworthy of credit. I think, my Lord, we need not go so far as to bring in this question of the nature of the conduct of the defence as determining the exemption or non-exemption of the accused from certain privileges. I hope that the last words may be deleted and that the trial should proceed in the manner provided for elsewhere, especially having regard to the fact that we are introducing a new section. "

The Hon'ble Sir George Lowndes :—" My Lord, there seems no object in this amendment. We have followed the English Act throughout, except where we have been heavily pressed this evening to make a concession which has recently been made by my Hon'ble friend of the Home Department. Otherwise we have followed the English Act all through, except that we have left out the words ' so as to involve imputations on the character of the prosecutor or the witnesses for the prosecution.' We have left out the words ' imputations on the character of the prosecutor,' because, of course, in all these cases before the Special Tribunal the prosecutor will be Government, whereas the English Act applies also to private prosecutions. We have followed the English Act and there seems no reason for going back on it. They have had 20 years' experience of this new addition and have found that it is a desirable one. Once we begin to tinker with it, even with the wisdom of the Hon'ble Mr. Sarma to help us, we do not know where we are and we lose all the benefits of the English precedent.

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*' That to sub-clause (*3*) of clause 12, the words ' or of any inference by the Court ' be added '.

†' That to sub-clause (*3*) of clause 12, the following be added :—

' nor shall the Court draw any inference adverse to the accused from such failure.'

‡' That to clause 12 (*3*) the following be added :—

' nor shall the Court draw any inference adverse to the person charged from such failure '.

"Then, as to the merits generally, it is perfectly obvious that if the defence makes aspersions on the witnesses for the prosecution, it is only fair that some retort should be made to them. If I may use a homily illustration, which, no doubt, will appeal to my Hon'ble friend Mr. Sarma in view of a recent discussion, what is 'sauce for the goose is sauce for the gander'."

The motion was put and negatived.

The motion that clause 12 of the Bill, as amended by the Select Committee and as further amended stand part of the Bill, was put and agreed to.

The Hon'ble Sir William Vincent:—"My Lord, I move that clause 13 stand part of the Bill." 7-2 P.M.

The motion was put and agreed to.

The Hon'ble Sir William Vincent:—"My Lord, I move that clause 14 stand part of the Bill."

The Hon'ble Rai Bahadur B. D. Shukul:—"My Lord, I beg to move the following amendment:—

'That for clause 14 the following clause be substituted:—

'14. The accused shall be acquitted unless all the Judges constituting the Court concur in convicting him'.

"My Lord, the amendment which I beg to move is not based on merely sentimental grounds. It is based upon the fundamental principle of British justice, a principle which has a long and sacred tradition behind it and which we all respect and value so highly. That principle, my Lord, is that the benefit of doubt shall be given to the accused. It is an established principle of the criminal jurisprudence that 99 guilty persons shall be let off but that not one innocent man shall be punished. Such is the great and sacred regard which the British Legislature has always attached to the freedom of the lives and liberties of the people. The Indian Legislature has also acted upon the same principle in the matter of the administration of the criminal law in this country, and this is the first time in the history of criminal legislation in India, except measures designed to meet the exigencies of war times, that a departure is sought to be made.

"My Lord, while moving various amendments to the Bill, and while speaking on the principle of the Bill, when it was introduced, we have endeavoured to make it quite clear how under the provisions of this Bill even an innocent man is likely to be hauled up. The administration of the Defence of India Act in the past has confirmed this view. The case of the Sindhubalas in Bengal and similar flagrant instances show the way in which laws of repressive nature are apt to be abused, and there can hardly be any guarantee to the effect that such abuse will not be repeated in future. As a concrete instance of this, with your Excellency's permission, I beg to quote the case of King-Emperor *versus* Narain Rao Vaidya tried and decided lately in the Central Provinces

His Excellency the President:—"Will the Hon'ble Member indicate to me how what he is saying comes under the amendment which he is moving."

The Hon'ble Rai Bahadur B. D. Shukul:—"I am just trying to point out that the benefit of doubt should be given to an accused, and a difference of opinion amongst Judges indicates doubt. That is what I am driving at, and I am going to give an illustration of the fact how this law is apt to be abused at times and innocent men hauled up and why an adequate safeguard is necessary."

His Excellency the President:—"Proceed."

The Hon'ble Rai Bahadur B. D. Shukul:—"Narain Rao Vaidya was charged with an offence punishable under rule 23 read with rule

29 of the Defence of India Act Consolidation Rules, 1915. The case was instituted and tried in the Court of the District Magistrate, Criminal Case No. 14 of 1918, and resulted in conviction. As a result of the same Mr. Vaidya had to undergo imprisonment and rot in jail for very nearly three months, and he was only released when the case went up to the Judicial Commissioner's Court and justice was at last done and he was released by Sir Henry Drake-Brockman, the Judicial Commissioner. The charge was to this effect :—

> 'I, Syed Zahir Ali, District Magistrate, hereby charge you Narain Kashinath Vaidya, as follows :—Fir t—that you on or about the 8th day of June, 1918, at Damoh in the course of a speech delivered by you made a statement to the following effect :—
>
> > '(1) Does anybody consult you when settlement is being done as to how you maintain yourself, and your circumstances, and how much you spend and how many dependents you have, and what rent ought to be assessed? Without any inquiry rent is assessed according to their sweet will, and the Tahsildar is deputed to make realisations. What is being done? The stream of money flows to England. War Loan is being demanded. There is no money. So where is it to come from? India is something like a sugarcane tree. The juice is extracted but the roots should be left alone. If the root is also gone then how can we enjoy the cane? If the root is eaten up then you are also gone and we are also gone.'

"This was the first item of the charge

The Hon'ble Sir William Vincent :—"May I rise to a point of order in this matter? As I understand from the Hon'ble Member, and my recollection corroborates his statement, this was not a trial under the Defence of India Rules at all, that is, before any court constituted under those Rules, but a trial before the District Magistrate under the Criminal Procedure Code. There was an appeal and the man was acquitted. It really seems to me to have no relevance to the point which is now under consideration."

His Excellency the President :—"I should like the Hon'ble Member to point out how all this is relevant to the amendment he is moving. I thought he was going to build up his argument on it, but I see now he is going off on another tack."

The Hon'ble Rai Bahadur B. D. Shukul :—"I wanted simply to point out that at times innocent men make innocent speeches—of course they may be severe and harsh speeches—and yet a charge is framed against them stating that that is an attempt to overthrow the British Government; and that is what had actually happened in the case I am quoting

His Excellency the President :—"That has nothing to do with the amendment you are moving."

The Hon'ble Rai Bahadur B. D. Shukul :—"Very well, my Lord, I shall proceed without it."

His Excellency the President :—"Give us another illustration."

The Hon'ble Rai Bahadur B. D. Shukul :—"My Lord, last year when my friend the Hon'ble Mr. Banerjea moved a Resolution on the Indian Defence Act, the Hon'ble the Home Member was pleased to admit that mistakes had been committed in the past and widespread alarm

The Hon'ble Sir William Vincent :—"I again rise to a point of order. That was in connection with advisory committees for internees and had nothing whatever to do with the question of trial at the King's pleasure."

The Hon'ble Rai Bahadur B. D. Shukul :—"But what I beg to point out is that these laws are liable at times to be abused, and this is a fact which, I submit, cannot be denied. There have already been numerous

complaints in the past that the emergency powers given by the Act upon which this Bill is based were being used with uncompromising rigour and often with little discrimination, and the Bill has naturally given rise to a general feeling in the country that the attitude of Government

His Excellency the President:—"If you were discussing the principle of the Bill you would be quite *ad rem* in referring to these matters, but you are now speaking to the amendment you have put before Council, and really I must draw your attention again to the fact and ask you to confine yourself to the amendment you are moving."

The Hon'ble Rai Bahadur B. D. Shukul:—"Well, my Lord, as I just now indicated, whenever there is a difference of opinion among the Judges, the established principle of the British law and justice is that the benefit of the doubt must be given to the accused. I submit, my Lord, that this principle should be adopted in this case as well, and as a proof of this and as an authority for this, I beg to point out that in the Prevention of Crimes Act, Ireland, 1882, 45 and 46 Victoria, Chapter 25, there is a provision to this effect:—

'A person tried by a Special Commission court shall be acquitted unless the whole court concur in his conviction, and the judges of the said court shall in all cases of conviction give in open court the reasons for such conviction.'

"Now that is the provision there and I beg to submit that a provision similar to that may be embodied in the Bill in substitution of the one that exists in the Bill."

The Hon'ble Mr. Surendra Nath Banerjea:—"My Lord, I have got a similar amendment * to move."

His Excellency the President:—"I don't wish to force you to speak."

The Hon'ble Mr. Surendra Nath Banerjea:—"I have just half a dozen words to say, my Lord, in this matter. When there is a difference of opinion between Judges trying an accused person, the fact indicates that there is at least some element of doubt. Two judges are on one side, the third on the other side. The very fact shows that, with regard to the guilt of the accused, there is some doubt; and if there is such a doubt, the accused surely should get the benefit of that, and that is the principle upon which my amendment is based. Let me call your Lordship's attention to one particular case which occurs to my mind in Bengal. It was under the Defence of India Act and therefore relevant to the particular matter which we are discussing. There were three judges and a young man was tried, I think, Krishnagar or Khustia was the place of trial, which is a sub-division of Krishnagar. Now there was a difference of opinion among the Judges. The plea that was set up was a plea of *alibi*. The young man came from a highly respectable family. Respectable witnesses deposed to the fact of the *alibi*. The non-official Judge accepted the plea. The official Judges did not, and there was a difference of opinion. Great excitement prevailed, articles in newspapers and so on. The matter went up before the Government of Bengal, and the Government in its executive capacity was called upon to determine whether this unfortunate young man had been rightly convicted or not. The Government upheld the verdict of the majority.

"Well, my Lord, cases of that kind ought to be avoided, and it does seem to me that it is a right principle and is attended in its practical application with no inconvenience that no man shall be convicted except on the unanimous verdict of all the Judges. And, my Lord, I understand that is also the Irish law. That is a provision of the Irish Criminal law, and I do hope that my Hon'ble friend the Home Member will see his way to accept this amendment. It is a reasonable amendment; but I do not find that he accepts everything that is reasonable."

* 'That for clause 14 the following clause be substituted:—
'14. The accused shall not be convicted except on the unanimous opinion of the Judges constituting the Court'.

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The Hon'ble Mr. Kamini Kumar Chanda :—"My Lord, I have a similar amendment * and I support it."

The Hon'ble Mr. V. J. Patel :—"My Lord, I have a similar amendment† on the agenda, and I support it. The amendment is all the more necessary in view of the fact that there is no right of appeal to the man and the trial is not by jury. In the Irish Act referred to by my Hon'ble friend the Mover of this amendment, you have at any rate the right of appeal, and yet it has been further provided that the verdict must be unanimous for conviction. Here there is no right of appeal. I therefore think that, unless the Judges are unanimous, the benefit of the doubt, as my Hon'ble friend Mr. Banerjea put it, must be given to the accused."

The Hon'ble Pandit Madan Mohan Malaviya :—"My Lord, I strongly support this amendment. Reference has been made several times to the Irish Act, and, I think, rightly. I beg to point out that under the Irish Act also the special court was to consist of three High Court Judges, and yet there was also an appeal provided. I would draw attention to a portion of the speech of Sir William Harcourt, who introduced the Bill, in order to show how strongly anxious they in England were to see that injustice should not be done."

His Excellency the President :—"Will it be long, because I propose to adjourn at a quarter to eight?"

The Hon'ble Pandit Madan Mohan Malaviya :—"I will finish, my Lord, before that."

His Excellency the President :—"Of course I am willing to let the Hon'ble Pandit continue his speech later, if he likes."

The Hon'ble Pandit Madan Mohan Malaviya :—"Thank you, my Lord. But I will finish shortly. Sir William Harcourt said :—

'The court will sit without a jury. They will decide the questions both of law and of fact, and their judgment shall be unanimous. Well, then, in order to give every security and confidence to this tribunal, we give in all these cases an appeal to the Court of Criminal Cases Reserved. I believe that is what it is called in Ireland. At all events, it is a body consisting of the residue of the Judges of the Supreme Court. I believe that the ordinary quorum of that Court is five Judges, and upon the appeal the judgment will be by a majority of the Court, so that you will see that no man' and it is this to which I beg to invite your Excellency's attention and the attention of the whole Council 'so that you will see that no man can be convicted, under these circumstances, without the assent of six Judges—three in the court below and three in the court above.'

"I submit, my Lord, that this lends strong support to the proposal that where there is no unanimity of opinion among the three Judges of the Court, the accused should have the benefit of the doubt, and I hope the Government will see their way to accept the amendment."

The Hon'ble Sir William Vincent :—"My Lord, I am sorry to be accused of being unreasonable by my friend, Mr. Banerjea. I thought we had met him throughout in a spirit of sweet reason during the course of this debate. There is another thing that I am sorry for and that is that in an unlucky moment in the course of the debate I mentioned the Irish Coercion Act, as I believe that by doing so I laid the foundation of a great deal of trouble. I think many Hon'ble Members would not have brought the Act up at all if I had not in a moment of weakness mentioned it.

The Hon'ble Mr. V. J. Patel :—"I rise to a point of order. It is a quarter to eight, your Excellency."

His Excellency the President :—"I think if we can get rid of Sir William Vincent it would be better."

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* 'That for clause 14 the following be substituted :—
'14. The accused shall be acquitted if the Court is not unanimous in finding him guilty'.

† 'That in clause 14 for the words 'the opinion of the majority shall prevail' the words 'the accused shall be acquitted' be substituted.'

The Hon'ble Sir William Vincent:—"I put it to the Council that though in the Irish Coercion Act they do have a unanimous verdict of the judges, there this verdict is in substitution of a unanimous verdict of the jury, whereas in many parts of this country these offences are not triable by jury at all, and even where they are triable by jury we do not require in any case a unanimous verdict. I think the Hon'ble Mr. Khaparde said, quite correctly, just now that in the High Courts a verdict of 6 out of 9 is accepted and in other courts where jury trials obtain, the verdict of the majority is accepted; and generally speaking we do not follow the system of always requiring a unanimous verdict. We accept a majority verdict or decision. This was the case not only under the Defence of India Act, but also under the Act of 1908, and I cannot remember any case of injustice under that Act I myself do not see why the opinion of one judge possibly on a point of law should prevail over two judges, or why a person who is accused of a revolutionary crime and is put before three judges, the very best tribunal we can give him, why he should be better off than an ordinary criminal. In the case of a difference of opinion between judges in the case of an ordinary criminal the opinion of the majority prevails even if it is a death sentence. At the same time I am quite sure that Members of this Council will admit that where any one Member of a tribunal under this Act was in favour of acquitting a person, his opinion would necessarily—any judicial officer who has ever done judicial work will bear me out—carry the greatest weight with the other two judges who are sitting with him. Whenever there is any question of this kind, the tendency of the court is always to go with the judge in favour of the acquittal, and it is only in the very strongest cases that a contrary view is taken. My Lord, the two cases by the Hon'ble Mr. Shukul really have no kind of connection with the amendment under consideration. I hope that Hon'ble Members will not allow their minds to be prejudiced by them; one was the case of Sindhubala. I think Hon'ble Members of this Council are well aware 7-45 P.M.

His Excellency the President:—"I think I checked the Hon'ble Member when referring to these cases."

The Hon'ble Sir William Vincent:—"Well, then, my Lord, I will not refer to them and will content myself with saying that for the reasons already given, namely, that the procedure under the Bill is in consonance with the practice in India and with the previous law on the subject, I regret I am entirely unable to accept this amendment."

The Hon'ble Rai Bahadur B. D. Shukul:—"My Lord, I shall say only a few words

The Hon'ble Pandit Madan Mohan Malaviya:—"I shortened my speech, my Lord, on the understanding that we would adjourn at this time. I hope I shall have an opportunity again."

The Hon'ble Mr. V. J. Patel:—"It will take some time, anyhow I am going to ask for a division."

His Excellency the President:—"Not if Mr. Shukul will finish his reply soon."

The Hon'ble Mr. V. J. Patel:—"Because the division will have to be taken."

His Excellency the President:—"I do not want to steal a march on any Member if he thinks it preferable to adjourn till 9 o'clock."

The Hon'ble Mr. Surendra Nath Banerjea:—"I am not coming here after 9 and therefore my vote will be lost; I want to record my vote."

His Excellency the President:—"It will be more convenient for Mr. Shukul to reply now."

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The Hon'ble Rai Bahadur B. D. Shukul:—" I shall say only a few words. It has been pointed out that the practice in India has all along been to have a majority verdict; but we must remember that it is not an ordinary procedure that we are discussing and providing for here, and that this is a measure of a drastic character; and so I hope the Government will accept the suggestion in this case. That is all I have to say for the present."

The motion was put and the Council divided as follows:—

Ayes—15.	*Noes—35.*
The Hon'ble Mr. S. N. Banerjea.	His Excellency the Commander-in-Chief.
Dr. T. B. Sapru.	The Hon'ble Sir Claude Hill.
Pandit M. M. Malaviya.	Sir Sankaran Nair.
„ Mr. S. Sastri.	Sir George Lowndes.
Mr. R. Ayyangar.	Sir Thomas Holland.
Mr. B. N. Sarma.	Sir William Vincent.
Mr. Asad Ali, Khan Bahadur.	Sir James Meston.
Mr. V. J. Patel.	Sir Arthur Anderson.
Sir Fazulbhoy Currimbhoy.	Mr. W. A. Ironside.
„ Maharaja Sir M. C. Nandi.	Sir Verney Lovett.
Khan Bahadur Mian Muhd. Shafi.	Mr. H. F. Howard.
Sardar Sundur Singh.	Sir James DuBoulay.
Mr. G. S. Khaparde.	Mr. A. H. Ley.
Rai B. D. Shukul Bahadur.	Mr. W. M. Hailey.
„ Mr. K. K. Chanda.	„ Mr. H. Sharp.
	Mr. R. A Mant.
	Major-General Sir Alfred Bingley.
	Sir Godfrey Fell.
	Mr. F. C. Rose.
	C. H. Kesteven.
	Mr. D. de S. Bray.
	Lieutenant-Colonel R. E. Holland.
	Surgeon-General W. R. Edwards.
	Mr. G. R. Clarke.
	„ Mr. H. Moncrieff Smith.
	„ Mr. C. A. Barron.
	Mr. P. L. Moore.
	T. Emerson.
	Mr. E. H. C. Walsh.
	Mr. C. A. Kincaid.
	Sir John Donald.
	Mr. P. J. Fagan.
	Mr. J. T. Marten.
	Mr. W. J. Reid.
	Mr. W. F. Rice.

The amendment was therefore negatived.

[At this stage the Council adjourned for Dinner.]

The Council re-assembled at 9-15 P.M.

9-15 P.M. **The Hon'ble Mr. V. J. Patel:**—" My Lord, the amendment that I have the honour to place for the consideration of this Council reads thus:—

'That to clause 14 the following words be added:—

'but in no case of difference of opinion shall a sentence of death be passed.'

The clause as amended will read thus:—

'In the event of any difference of opinion between the members of the court, the opinion of the majority shall prevail, but in no case of difference of opinion shall a sentence of death be passed.'

"My Lord, coming events cast their shadows before. We are shortly going to have a first, rather a substantial instalment, we hope, of self-government, and it is in the fitness of things that we should copy some of the methods of debates in the House of Commons, at any rate in having night sittings We are on our trial, and, I hope, we shall stand the trial all right and we shall have complete self-government in the near future.

"My Lord, coming to the amendment itself, the Council knows that we are taking away the right of trial by jury, we are taking away the right of trial by ordinary courts of law, we are doing away with commitment proceedings and we are creating special rules of evidence. We have just rejected an amendment to the effect that in case Judges are not unanimous the accused should be acquitted.

"Now I come to a more moderate amendment which I place for the consideration of this Council. The point, my Lord, is that if three Judges who sit in the special tribunal are not unanimous as regards the guilt of the accused, the accused should not be sentenced to death, and I appeal to your Excellency, and to the official members and also to the non-official members of this Council to consider this amendment favourably in the name of humanity, and I trust the amendment will be received in the spirit in which I have moved it."

The Hon'ble Sir William Vincent:—"My Lord, I remember that when the Defence of India Act was before the Council, a very similar amendment to this was pressed, and I think that many members of this Council who were present then and are here to-day may remember it. I remember also that, although the amendment was not accepted by Government, there was a very strong feeling among the non-official members on the point, and I am prepared to accept the present amendment in substance. I do not think that it will come in properly into section 14. I have consulted with the Legislative Department which is responsible for the drafting of these measures, and I propose either to accept an amendment if the Hon'ble Member will move it, or to move an amendment myself if the Council will permit me to do so, to the following effect, by a proviso to section 16 'Provided that a sentence of death shall not be passed in any case in which there is a difference of opinion among the members of the court as to the guilt of the accused.' I trust that will meet the Hon'ble Member's wishes. It is at any rate as far as the Government are prepared to go."

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, I should like to know the effect of the amendment moved by the Hon'ble the Home Member. Suppose there is a difference of opinion in the court about a sentence of death, then what is to happen, and what if it is about any other sentence that may be passed?"

His Excellency the President:—"I think it will be more convenient if the Hon'ble Member were to finish his speech."

The Hon'ble Pandit Madan Mohan Malaviya:—"I do not know if I can make a speech until I know what exactly the Government is prepared to accept."

His Excellency the President:—"The Hon'ble the Home Member has said quite clearly what he is ready to suggest Government should accept. I think it would be very much better if the Hon'ble Member were to proceed with his speech."

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, I submit that in a matter of this importance it is necessary that we should know

His Excellency the President:—"I do not know what the Hon'ble Member refers to. The significance of Mr. Patel's amendment is that it relates to the sentence of death, and on that point the Hon'ble the Home

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Member is prepared to meet Mr. Patel, but not on this particular section; he proposes to meet him on another section."

The Hon'ble Mr. M. A. Jinnah:—"My Lord, it seems to me that the only difference between Mr. Patel and Government after what the Hon'ble the Home Member has said is that the amendment should properly come under clause 16 and not under clause 14. That section deals with the sentence of death and nothing else. With regard to the other sentences, it is left to the court to pass such sentences as it may think proper That being so, my Lord, it is quite clear that Mr. Patel's amendment is practically accepted, only instead of coming under clause 14, it comes under clause 16. If that is so, I see no difference at all."

His Excellency the President:—"I do not think there is any difference, but I do not quite understand what the Hon'ble Pandit wants."

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, I wanted to have the language which the Government is ready to adopt, so that we may know exactly what the effect of the change would be. It is rather a difficult task to deal with an amendment of such importance without having the language of it before us. If the Hon'ble the Home Member will be good enough to repeat it, I may be in a better position to understand it."

The Hon'ble Mr. M. A. Jinnah:—"My Lord, I understood really that the amendment is accepted in spirit. It is only a question of drafting, and the Hon'ble the Home Member has informed us that the Bill will be placed before the Council before it is finally passed."

The Hon'ble Sir George Lowndes:—"In this particular case the draft is my own final draft."

The Hon'ble Sir William Vincent:—"I am prepared to read the amendment out again. Though I am willing to explain it, I feel this may lead to a discussion that I am anxious to avoid:—

'Provided that a sentence of death shall not be passed in any case in which there is a difference of opinion among the members of the Court as to the guilt of the accused'."

His Excellency the President:—"Is it the wish of the Council to accept the amendment which has now been approved?"

The Hon'ble Mr. V. J. Patel:—"I think the Hon'ble the Home Member's amendment is perfectly clear and my suggestion is entirely met except that instead of under section 14 the amendment comes under section 16. As far as I am concerned I am perfectly satisfied."

[illegible] as I am concerned [illegible] part of the Bill was put and agreed to.

The motion that clause 14 stand p[illegible]

The Hon'ble Sir William Vincent:—"May I rise to a point of order; I wish to make it clear that this amendment has to come in under section 16."

His Excellency the President:—"But we have just finished with section 14."

The Hon'ble Sir William Vincent:—"My Lord, I move that clause 15 as amended by the Select Committee do stand as part of the Bill."

The Hon'ble Rao Bahadur B. N. Sarma:—"Mr. Patel, if your Lordship permits, will move because his is a more detailed amendment on the same subject."

The Hon'ble Mr. Srinivasa Sastri :—" The same with mine."*

The Hon'ble Mr. V. J. Patel :—" Your Excellency, I have the honour to move the following amendment :—

" That to clause 15 the following proviso be added :—

' Provided that the Court shall not convict the accused of any offence referred to in clause (2) of the Schedule or of any attempt or conspiracy to commit any such offence or of any abetment of any such offence unless it is proved to its satisfaction that such offence, attempt, conspiracy or abetment is connected with a particular movement endangering the safety of the State.'

" I will invite in this connection the attention of the Council to the Schedule clause (2) :—

' Any of the following offences, if, in the opinion of Government, such offence is connected with any movement endangering the safety of the State, namely :—' and so and so.

" Now so far as the preliminary notification is concerned, the Governor General in Council may issue it if satisfied that the offences mentioned in the Schedule and connected with movements endangering the safety of the State are being promoted in any area; I do not also object to the Local Government laying information before the Chief Justice against a person if it is satisfied that such person has committed any scheduled offence connected with any movement endangering the safety of the State; but once such information is lodged and the case is before the Tribunal, my contention, your Excellency, is that the Tribunal must be satisfied, not merely that the offence is committed by the accused, but that such offence is connected with a particular movement endangering the safety of the State. What I mean is that, the opinion of the Local Government that the offence is connected with any movement endangering the safety of the State, should not be binding on the Court trying the accused person. If the Tribunal comes to the conclusion that, although a man has committed an offence under section 124-A, section 148 or any other section mentioned in the Schedule, that offence is an ordinary offence under the Penal Code, not in any way connected with any movement endangering the safety of the State; then the Tribunal must acquit the man. That is to say in such cases an accused person should not be deprived of the rights to which he is ordinarily entitled under the ordinary procedure, namely, the rights of trial by jury, of commitment proceedings, of appeal, if as a matter of fact the trying Tribunal finds that the offence is not connected in any way with any anarchical or revolutionary movement. The whole frame of the Act shows that it is enacted solely to deal with anarchical and revolutionary movement, and if the trying Tribunal comes to the conclusion that, though the Local Government thinks that the offence committed by the accused is connected with any movement endangering the safety of the State, the court thinks otherwise, it has no relation whatever to any such movement, then I submit the Tribunal must stay further proceedings, acquit the accused and leave it to the Government to proceed further against the accused in the ordinary court of law or not. It is therefore with a view to clear the intentions of the Government that I have moved this amendment, and I trust the Council will accept it."

The Hon'ble Mr. M. A. Jinnah :—" My Lord, with regard to this clause 15 in the Bill what has puzzled me a little bit is this. Clause 15 runs as follows:— 9-30 P.M.

' If at any trial under this Part it is proved that the accused has committed an offence against any provision of the law which is referred to in the Schedule, the Court may convict the accused of that offence although he was not charged with it.'

" Now if I understand the meaning of this clause correctly, it amounts to this that, although the original information charges an accused person with one particular scheduled offence, in the course of the trial it turns out upon the evidence that another offence, but a scheduled offence has been committed, then it empowers the Court to convict the accused of that offence

* " That to clause 15 the following be added :—

' Provided that the offence of which he is so convicted is connected with an anarchical or revolutionary movement.'

provided it is a scheduled offence. That being so what I cannot quite follow is when you come to the Schedule. A scheduled offence is defined by clause 2 :—' Scheduled offence means any offence specified in the Schedule.'

"If you turn to the Schedule you find under it :—

'(1) Any offence under Chapter VI (other than an offence under section 124-A) and sections 131 and 132 of the Indian Penal Code.' That I can quite understand. But when you come to (2) the words are :—

'(2) Any of the following offences, if, in the opinion of Government, such offence is connected with any movement endangering the safety of the State.'

"Well, now, here, my Lord, the words 'in the opinion of the Government' puzzle me to a certain extent, and my point is this, whether the opinion of the Government, namely, that the offence with which the accused is charged is a scheduled offence, will be conclusive upon the court or not. If that is going to be conclusive so far as the court is concerned, then that will be decided by the Local Governments and not by the court ; otherwise I do not understand the significance of these words ' in the opinion of the Government ' because in clause 1 of the Schedule you say nothing about the opinion of the Government. Those are the scheduled offences in clause 2. If you only leave it simply at defining scheduled offences, then there is no difficulty, but if you keep these words, then, my Lord, Mr. Patel's amendment is very significant because that clears the doubt. I submit there is a doubt. It clears the doubt and the amendment then comes in very forcibly because it says—

' Provided that the Court shall not convict the accused of any offence referred to in clause (2) of the Schedule or of any attempt or conspiracy to commit any such offence or of any abetment of any such offence unless it is proved to its satisfaction (*i.e.*, to the satisfaction of the Court not ' in the opinion of the Government ') that such offence, attempt, conspiracy or abetment is connected with a particular movement endangering the safety of the State.'

" Therefore, personally, I would rather that clause 2 of the Schedule was put right than to have this long amendment."

The Hon'ble Rao Bahadur B. N. Sarma :—"I would request your Lordship to permit me to put my amendment separately, because I find that it differs in some respects from the amendment of the Hon'ble Mr. Patel. I might have misled your Lordship by saying in the first instance that they were practically the same. I do not want to make two speeches and I shall say what I wish to on this amendment, which in many respects agrees with Mr. Patel's amendment. I point that out and, if your Lordship wishes, you can put it separately."

His Excellency the President :—I understand you want to make only one speech."

The Hon'ble Rao Bahadur B. N. Sarma :—" Whether Your Lordship will permit me now or later, I will make only one speech.

His Excellency the President :—" You had better do it now."

The Hon'ble Rao Bahadur B. N. Sarma :—" This is a question of very great importance and I do not believe that the Government could have contemplated the actual effect which might perhaps be the result if clause 15 were to be left as it stands. Clause 15 says :—

' If at any trial under this Part it is proved that the accused has committed an offence against any provision of the law which is referred to in the Schedule, the Court may convict the accused of that offence although he was not charged with it.'

It may be that several accused may be put up at one trial on account of the connecting link that they were members of a revolutionary or an anarchical conspiracy and therefore have to be tried together, or it may be that one

person will be put on his trial for an offence coming under any of the schedule-described offences. But in either case the gist of the offence is that it is an offence connected with a revolutionary or anarchical movement against which alone this Bill is directed. In the course of the trial under clause 15 it may be found that though the man is charged with hurt under section 326 he may be found guilty of mischief under section 435, etc. I can understand his being charged with an offence against the State, I can understand a charge of taking part in a murder and of his being convicted of culpable homicide not amounting to murder, a lesser offence, but I cannot understand that it is meant that if a person is charged with grievous hurt or with a similar offence he should be convicted of an entirely distinct offence, for instance, an offence under the Explosive Substances Act or an offence under the Arms Act or the offence of mischief or the offence of criminal intimidation, and so on. That would be the result if this section stands as it is. Section 236 and section 237 of the Criminal Procedure Code describe clearly the limitations under which a person can be convicted when the facts are capable of coming under the description of more than one offence. Section 236 says :—

'If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once.'

"Then section 237 says :—

'If in the case mentioned in section 236, the accused is charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section

The Hon'ble Sir William Vincent :—"May I rise to a point of order? There is a great deal of force in what the Hon'ble Member is saying, but I submit that it would come better in connection with an amendment which is to be moved by the Hon'ble Mr. Chanda at a later period. Of course the point to which the Hon'ble Mr. Jinnah adverted stands on a different footing."

The Hon'ble Rao Bahadur B. N. Sarma :—"I shall not deal with it at greater length. I only meant to say that there is that real difficulty, and that possibly the Government meant that the person may be convicted of an offence though it may not have been the offence with which he was charged on the ground that he was a member of a revolutionary conspiracy and in the course of a series of acts in pursuance of that conspiracy the various crimes are committed. That is the reason why I point it out; but I see clearly that the Government are likely to give some attention to it, so I shall not say more on that point.

"Then, my Lord, the amendment that I have suggested, which is largely covered by the Hon'ble Mr. Patel's amendment, is that the words 'in connection with an anarchical or revolutionary movement' should be inserted after the word 'Schedule', so that clause 15 will run :—

'If at any trial under this Part it is proved that the accused has committed an offence against any provision of the law which is referred to in th Schedule in connection with an anarchical or revolutionary movement, etc.'

"I took it that the Government wished to proceed against a man not for any of these scheduled offences, but only if those offences are committed in connection with an anarchical or revolutionary movement, and that is the reason why I have suggested this amendment. Otherwise there would be this danger that if a man is to be convicted under this Chapter of an offence, even when it is not connected with a revolutionary or anarchical movement, he might be deprived of the benefits of a trial under the ordinary criminal law, and that would be so even though the Judges may find that he has committed no offence in connection with a revolutionary or anarchical conspiracy. That could not have been intended. Therefore I submit that it must be found as a fact before a person can be convicted under this Part of the Act that his offence is actually connected with an anarchical or revolutionary

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movement. The danger that I apprehended was this. If it is only to be the Local Government in its executive capacity that is to be the judge as to whether an offence is connected with a revolutionary movement or not, then there will be great danger of the Government being misled into taking action against an individual on the strength of a recommendation that might be made to it by one of its officers in the belief that he was really connected with a revolutionary movement though he might not be so connected. That is, we are substituting the judgment of the Local Government, which may virtually mean that of a Deputy Secretary or Under-Secretary in actual practice, for the decision of a judicial tribunal; and there would also be a great temptation in cases of riots such as those which occurred in Bihar or which recently unfortunately took place in the United Provinces. Of course it may be that the officer upon whose opinion the Government will act may at first think or imagine that there is some sort of a revolutionary movement in any part of a province in which these particular offences are committed, these riots or these murders or these acts of mischief or hurt, and that there is some connection between them; then the machinery is set in motion, and although as a matter of fact it may be clearly proved that those acts had absolutely nothing to do with an anarchical or revolutionary movement, the accused will not have the slightest chance of escape from the rigorous provisions of this Code—a state of things which cannot have been contemplated by the Legislature or the Government.

"The third point is that I have given notice of an amendment in connection with the Schedule itself, and I shall have to allude to it because I have to ask that in clause 15 the words 'revolutionary and anarchical' should be substituted for the words 'any movement endangering the safety of the State', because 'any movement endangering the safety of the State' need not necessarily be an anarchical or revolutionary movement. Disaffection between several classes of His Majesty's subjects—say between Hindus and Muhammadans, or between one sect of Hindus and another sect of Hindus—a movement directed against any one of those classes may be a movement which is likely to endanger the safety of the State, but at the same time it may not be an anarchical or revolutionary movement I thought we were aiming in this Bill only at anarchical and revolutionary movements, and not at other movements which may be equally harmful to the State, which may be equally dangerous to the safety of the State, and which may not be and which need not be revolutionary or anarchical movements. I therefore submit that we shall be unwittingly or wittingly enlarging gravely the scope of the Schedule and the scope of clause 15, unless we limit the wording of the Schedule by the employment of words like those which I have employed in my amendment. I submit we should employ language to limit the scheduled offences connected with revolutionary and anarchical movements.

"That is my first suggestion. Secondly, I submit that we should not allow the opinion of the Local Government to be final in the determination of the question as to whether any offence that a person may have committed is connected with an anarchical and revolutionary movement or a movement dangerous to the State. We should substitute for 'the opinion of the Local Government' 'the opinion of a Court of Justice'; and the moment a Court of Justice does not see any connection whatsoever between the acts of the accused and a revolutionary or anarchical movement the man must be released at that trial although he may stand trial for a different offence under the regular provisions of the criminal law. That is my humble submission. It is a matter of great importance, and I hope the Government will duly consider the representations made by us."

The Hon'ble Mr. K. V. Rangaswamy Ayyangar:—"My Lord, this is only a sub-division of the whole Bill, and so when the Bill is only intended for coping with anarchical and revolutionary crimes, there is no necessity to include the amendment here. Even the attempt to define 'revolutionary' has not been successful. Further, I conscientiously believe that the crimes scheduled in the latter portion of the Bill are not less heinous than revolutionary and anarchical crimes, and so I beg to oppose this amendment."

The Hon'ble Pandit Madan Mohan Malaviya :—"My Lord, the Bill contains an admixture of provisions of two characters. Part I of it contains provisions for a speedy trial in judicial form of certain offences; the other consists of provisions of a preventive character. The difficulty which the amendment seeks to deal with arises from this rather unhappy combination. Now, my Lord, so far as measures of a preventive character are concerned, the Schedule stands on the footing that if in the opinion of the Government certain offences are connected with any revolutionary or anarchical movement for the purposes of prevention, those offences shall be treated as such, and a certain course of preventive measures shall be adopted. The view that the Government will take of the connection of an offence with such a movement, will be decisive so far as these preventive measures are concerned. I understand the position without admitting the wisdom of it. But Part I does not deal with prevention. Part I deals with the trial of offences—the judicial trial of certain offences, and all the part that the executive Government plays in relation to Part I is that the Governor General in Council being satisfied that in the whole or any part of British India anarchical or revolutionary movements are being promoted and that scheduled offences in connection with such movements are prevalent to such an extent that it is expedient in the interests of public safety to provide for the speedy trial of such offences, he has by a notification in the Gazette of India, to make a declaration to that effect, so that the provisions of this Part should come into force in the areas specified in the notification. This is a notification of a general character. It does not deal with any individual case; it ought not to, it is not expected to, it is not contemplated that it should affect the decision of any particular case with regard to the charge of guilt, or character of the guilt, which the court may have to try. The notification having been made, the Local Government has to initiate proceedings against any individual. The proceedings having been initiated against a person charged with having committed an offence which comes in the category of scheduled offences, a judicial trial—not in the ordinary regular constitutional form which we are familiar with in the existing law of the land, but a judicial trial under a special constitution and under certain special rules of evidence—has to take place. Now the trial of the accused may relate to an offence under Part I of the Schedule. In that case the Court has only to be satisfied, before it can pass any sentence upon him, that he is guilty of an offence or offences which are mentioned in the first part of the Schedule, namely, any offence in Chapter VI other than an offence under section 124-A, *i.e.*, an offence against the State or against the Army or the Navy: that stands on a different footing. A court can come to a conclusion with regard to any of those offences without their being complicated with any other offences or considerations. But a trial for an offence included in the second part of the Schedule will be complicated. As section 15 stands the Court will have to find whether the man is guilty of any of the numerous offences other than those with which he may be charged which are mentioned in the second part of the Schedule. I need not repeat all the sections that are there referred to. But if a man is tried for any one particular offence this section as it stands would give the court permission to convict him of any offence against any provision of the law which is referred to in the Schedule, though the accused may not have been charged with it. Now, my Lord, these offences receive their grave character by reason of their being connected, as it is put in Schedule 2, with any movement endangering the safety of the State; that, therefore, is an important element in determining the character of the offence, the extent or gravity of the guilt of the accused. That will determine the attitude of the court in dealing out punishment to the man. Now the question arises: Has the court any power to deal judicially, to come to a judicial determination, on the question whether any of the offences described in Schedule 2 has been committed by the person who is on trial? That question necessarily involves a decision on two things, one that the offence should be one of those that is named in the Schedule 2 (*a*), and secondly that such an offence should be connected with any movement endangering the safety of the State. Obviously it should need no argument to show that it is the Court which is seized of the trial which should come to a determination on both elements which go to make up the offence which the Court is constituted to deal with. But then we

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tumble upon this expression in 2(*a*), namely, any of the following offences if in the opinion of Government such offence is connected with any movement endangering the safety of the State. That creates an insuperable obstacle; as the Bill stands, the Court must swallow this unjudicial executive decision, namely, that a certain offence which it is sitting to try is connected with a movement endangering the safety of the State. It can do nothing else unless what Mr. Patel has suggested is accepted. It should be left to the Court to come to a conclusion on both the two Parts which go up to constitute the offence which alone it is contemplated, that the special court should deal with. But if it is not to be, the court will then try the accused, find that he is guilty of a certain offence, and assume that that offence is connected with a movement endangering the safety of the State, and proceed upon that basis to determine the sentence which it should pass upon the man. Its judgment is also to be influenced by that circumstance in arriving at a conclusion as to whether the man is or is not guilty.

"I submit, my Lord, the Bill creates a very extraordinary position. So far as the first Part of this Bill is concerned, all that the Government has expressed as its desire to secure is a speedy trial of certain offences but still a judicial trial. But section 15 as it stands will mean much more than a speedy trial; it will mean a partial trial of an offence; it will mean a trial of an offence in determining which one important part of the judgment will have been arrived at by the executive government and imposed upon the court, which the court will have no power, no jurisdiction to question, to deal with, to determine; and another part which the court will have to determine.

"I submit, my Lord, that this should be avoided, that so far at least as Part I is concerned where a judicial trial is provided the Legislature should secure that the trial is a fair, impartial and complete trial, so far at any rate as the determination of the offence is concerned, namely, the complete offence with which a man is charged. If the court is not to try the fact, whether the offence is or is not connected with a movement endangering the safety of the State, then I submit the very least that should be done is that when the court does not feel satisfied that the particular offence with which a man has been charged has not been proved against him, that man ought to be acquitted. The man ought to be acquitted by the special Court. That does not mean that a man who may be guilty will be let go altogether. There are other provisions of the law under which he can be tried, according to the ordinary regular procedure provided in our Codes. The advantage to him will be that he will not then be deprived of the constitutional safeguards of life and liberty which are provided for him. The moment the court feels that a man is not guilty of the particular offence for which he was placed on trial before it, I submit the court ought to stop its proceedings and let the man go. It is not an answer to this argument to suggest that the time of the court will have been wasted and that another court will have to sit to sift the facts and to try the man. It is essential, it is necessary in the interests of justice, unless justice is to be murdered to the extent to which the trial of an important element of the offence is concerned, unless justice is to be denied to the man so far as the trial of an essential element of the offence is concerned, I submit it is necessary that the man should be acquitted so far as the special tribunal is concerned.

"Now, my Lord, the result that would follow would be that if a person accused of an ordinary offence would have the right to be placed before a Magistrate in the ordinary course, committed for trial, if the Magistrate finds that there are grounds for it, he will have his trial in the Sessions court and have his appeal to the High Court. For all these reasons I submit that either these Schedules should be defined separately, differently, for the purposes of Part I and Parts II and III, namely, the judicial trial portion and the preventive measures portion; or it should be provided—if I might move an amendment—it should be provided that when it is proved to the satisfaction of the court in any trial under this Part that the accused has not committed the offence with which he was charged, he must be acquitted. If this is not acceptable to Government at this stage, then I submit that the very least that ought to be done is to accept the Hon'ble Mr. Patel's amendment. I hope, my

Lord, the matter will be considered impartially. I hope that the proper course will be followed which will ensure that the decision in such a trial as is provided for in Part I, will not be vitiated by the inevitable necessity of the court accepting the verdict of the Executive Government with regard to an important element in the offence with which the man is charged before it."

The Hon'ble Sir William Vincent:—"My Lord, what the Court has to decide in this case as in every case is whether a certain accused person is guilty of a particular offence or not. Before the accused is put on trial before a court under this Part, the Government comes to a distinct decision as to whether that offence is connected with revolutionary or anarchical movements or not. And in accordance with that decision of Government the question of the tribunal before which a man is to be tried for a particular offence is decided. In no case is there any question of putting him before a partial or unfair tribunal as has been suggested."

The Hon'ble Pandit Madan Mohan Malaviya:—"I rise to a point of order. I did not say that it would be a partial or unfair tribunal. I did not attack the tribunal."

The Hon'ble Sir William Vincent:—"I was going to say that the Government then constitutes a singularly strong and impartial tribunal by which this offence will be tried. I have already explained to the Council that one of the objects for which this procedure is intended is to secure an expeditious and at the same time a perfectly fair and impartial trial. I ventured to put it to the Council now, that the procedure which the Hon'ble Mr. Patel suggests would be destructive of expedition, and would indeed make the trial of any offence by one of these tribunals almost impossible. Not only would the court have to decide points which ordinarily come before criminal courts that is whether the accused is guilty of murder or not, they would have to go into the further and abstruse question as to whether this murder was connected with some revolutionary conspiracies. May I take an instance. Let me take the case of a man like Pingley who was a well known revolutionary; let us assume as was the fact in this case that there was the clearest evidence of guilt of an offence punishable with death. Let us assume as was actually the case that Pingley committed this crime in pursuance of a revolutionary conspiracy, and that this last information was derived from a number of facts which could not be placed before the court and the proof of which would have necessitated entering into a number of points entirely unconnected with the simple issue whether or not Pingley had committed murder. I want to know whether the Council thinks that such a man should be acquitted, merely because evidence is not tendered to show that the murder was connected with a revolutionary conspiracy. 10-1 P.M.

"The question whether this murder was in furtherance of a conspiracy is really a condition precedent to putting the man before the court. If the Government is satisfied on this point, then only is the man put before this special tribunal appointed under this Part, but it would be impossible for the court again to go into that question of revolutionary conspiracy without trying a number of facts which are irrelevant to the trial; every inquiry would be protracted interminably. In fact the whole object of the part which is to secure an expeditious trial would be lost. It is for this reason that I regret I am unable to accept this amendment. Let me assume that an accused was before the ordinary courts, would that court have to decide such questions? Certainly not. The only question it would have to decide is whether this man had committed murder or not. If the court of three High Court Judges find ample evidence to show that a man has committed the offence with which he is charged, I submit the question whether it was committed in connection with a revolutionary conspiracy or not is not one that you can reasonably ask the court to discuss or to examine; for this

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reason I must oppose this amendment. It was a little surprising to find the Hon'ble Mr. Patel assuming complete ignorance as to the intention of Government in this matter. I do not know if I am divulging a secret but I may go so far as to say that the question was discussed at length considerably in Select Committee. The amendment of Mr. Sarma as to the Schedule is a separate matter with which I need not deal with at present."

10-13 P.M. **The Hon'ble Mr. Srinivasa Sastri**:—"Your Excellency, I am certainly aware of the circumstance that this point received attention in Select Committee. I think it was unfortunate that our views did not prevail in that Committee when we were considering the point; for it seems to me that it has an intimate bearing on the principle of the Bill as frequently enunciated by the Hon'ble the Home Member.

"The Council will remember that not once or twice but a good deal oftener the suspicion that has been expressed with regard to this Bill is that in times of excitement and trouble Government may be under a temptation to use it for purposes for which we do not at present intend it. Having been intended for the trial of offences connected with movements endangering the safety of the State, this procedure may come to be used for the trial of offences not coming under that description. This was the suspicion that we have frequently expressed that critics in newspapers and elsewhere who are opposing this measure in the country have often expressed. Our great suspicion has been, I repeat it, that this may be used to deal with ordinary political offences. We were told that we were entertaining unjust and unfounded suspicions; we were told that Government had no such intentions at all, and in order to make it clear that that was no part of Government's intention, the words 'anarchical and revolutionary movements' were introduced in the Preamble and in certain sections. So far it was satisfactory. But we find on examination that that would not fully allay the suspicions that have been created, and I am afraid what the Hon'ble the Home Member says now will help the continuance of this suspicion. To remove the suspicion entirely, I think it is necessary for the Hon'ble the Home Member to meet the Hon'ble Mr. Patel fully. For supposing an area, say Bengal, is declared by the Governor General in Council as a place to which this Part shall apply owing to the prevalence of anarchical and revolutionary movements; suppose there the Local Government believing a person guilty of an offence connected with a movement endangering the safety of the State, puts him up for trial before this special tribunal, but actually in the course of the trial it turns out clearly that his offence, although say, it might have been grievous hurt, one of the scheduled things, although it might have been grievous hurt, had nothing whatever to do with any movement endangering the safety of the State, but arose say, from a boundary dispute or a domestic quarrel; supposing it was so. Then according to the interpretation of the Hon'ble the Home Member, the Court would still proceed with the trial and finish up with a conviction. Now as soon as the officers of the Local Government found out that even in a case of that kind where it was clearly established that the offence was not connected with a movement endangering the safety of the State, they could go on and get the court to record a conviction. I am perfectly certain that, as things go, in a proclaimed area under a state of excitement and public disturbance, the court will be filled every day with people brought up under one kind or another of offence coming under the Schedule, but not necessarily connected with movements of an anarchical or revolutionary nature. Once the officers find out that they can bring up people before courts, secure expeditious convictions and so contribute to the time when peace will be established in the province, the court will come more and more to be used for such purposes. Section 124-A and section 153-A with regard to which our feelings are most tender, sections dealing with sedition and offences connected with exciting feelings between different classes of His Majesty's subjects, it is just those sections which are likely in times of disturbance, with the best of intentions in the world but with no particular anarchical or revolutionary ideas as in many cases, I think,

the officers of the Government are willing to grant, that it is just in those cases that the likelihood is the greatest of people actually being brought up before this trial and rushed through to a conviction without however really coming within its scope. That is why we are anxious that the court should in every case record a finding upon the question whether the offence is really connected with a movement endangering the safety of the State. It is only when the Hon'ble the Home Member admits this amendment and compels the court to record a finding on that that he will stand clear, that he will be acknowledged by us to have given full effect to the intentions, that he has so frequently expressed, that it is not the desire of Government to use this Act for anything but the trial of anarchical and revolutionary crime. There is great danger of the other thing taking place, and I would therefore beg the Hon'ble the Home Member to reconsider his attitude and not to allow any part of the impression to remain that perhaps this undesired effect will follow. I am prepared to concede this that it will lead to a certain waste of public time of the court. The court having tried an offence up to a certain stage will have to abandon it altogether when it finds that the crime charged is not, as the Local Government supposed, actually connected with anarchical or revolutionary movement. The thing will have to stop there That amount of inconvenience and waste of time there is, but I think the Government, anxious as it is, to establish the character of this Bill as absolutely clear and not intended to deal with ordinary political crime, that amount of inconvenience is a risk that Government must be content to run.

"Your Excellency, there is just one other point which I wish to impress on the Government. Let it not be supposed that, even if the Hon'ble Mr. Patel's amendment be fully accepted, it will answer the case of those critics both here and outside this Council who tell us frequently that this is a weapon that Government are forging not merely for the purpose of dealing with anarchical and seditious crime, but actually to strengthen their hands and to put down political movements which become inconvenient to Government. To answer them fully Parts II, III and IV will have also to be radically re-cast. This is not enough, but if this be not done, then, I think, the criticisms will stand justified and the intentions that have been expressed, I am prepared to accept them at their face value, the intentions that have been expressed will, I think, remain without satisfactory proof that effect will be given to them in the sections."

The Hon'ble Dr. Tej Bahadur Sapru :—"It seems to me, my Lord, that there are two important stages which have got to be borne in mind. The first stage is that which is covered by clause 3 of this Bill, under which it is open to the Governor General in Council to declare that in the whole or any part of British India anarchical or revolutionary movements are being promoted, and if scheduled offences in connection with such movements are prevalent to such an extent that it is expedient, in the interests of the public safety, to provide for the speedy trial of such offences. Well, the Governor General having declared that such anarchical or revolutionary movements are being promoted, the next stage is reached when action is taken against a particular individual or a number of individuals connected with that movement. When such action is taken the question at once arises, what are the courses open to that individual or those individuals? Now the individual concerned may take one of two courses; either he may say he is not at all guilty, or he may plead guilty to the offence, and at the same time say he is not guilty of the offence within the meaning of this Act, that is to say, although he may have committed any one of these offences which are described in the Schedule, yet he may plead that he has not committed any one of those offences in connection with any anarchical or revolutionary movement. Well, if he does plead that the court has got to consider that question upon clauses 3 and 15, and I submit there is nothing to prevent the court coming to the conclusion, yes or no, as to whether that man is connected with that movement or not. But the answer to that argument is that the court cannot do it because in the Schedule that has been attached to this Bill it is not open to the court to go into the question as to whether the individual has committed that offence in connection with any movement or not, because that is a matter which depends on the opinion of the Government. The words in the Schedule are:—'any of the following offences, if,

in the opinion of Government, such offence is connected with any movement endangering the safety of the State,' and then the offences are set out. So that it seems to me, my Lord, that the function of the court will be simply to go on with the question as to whether the man has committed the offence or not and to shut its eyes to the further question whether that offence was connected with anarchical movement or not and to accept, without challenge, the opinion of the Local Government. It really means that the Local Government's or the executive Government's decision is super-imposed upon the will of the trying Magistrate or the Judge. My Lord, I submit that is not fair and that is not consistent with the avowed policy of the Bill. You allow the court simply to try the bare question as to whether the man had or had not committed that offence, but you do not allow the court to try the most vital question, namely, whether that offence is connected with the movement or not. I submit if you take out these words 'in the opinion of the Government' from the Schedule there will be no occasion for the amendment put forward by Mr. Patel. It is because those words are there that I think it necessary that that amendment should be accepted. My Lord, I think the question is one of very great importance, and if you take away that privilege and that right from the court, the privilege and right of deciding whether any particular offence is connected with that movement, I submit you take away a most valuable safeguard from the liberty of the individual."

10-27 P.M. **The Hon'ble Sir George Lowndes:**—"My Lord, whether this provision is right or wrong may be disputable, but the Council are rather in danger of losing sight of the thread of it. The Hon'ble Pandit has said that an important element of the offence is that it is connected with anarchical and revolutionary crime. He said at least twice, I think three times, that we were withdrawing from this tribunal the cognisance of this important element of the offence. Let us get right away from that at once. The tribunal has to decide whether a particular offence has been committed or not. The offences are set out in the Penal Code sufficiently for their purpose. We will take an illustration—murder, arson, dacoity, grievous hurt, those are the offences. Then what tribunal has to try them? Ordinarily they are tried by what we call here the ordinary courts of the country. In particular cases they will be tried by special tribunals. But it is the same offences in each case; it is murder, yes or no, that the tribunal has to try; it is arson, yes or no, dacoity, yes or no. Those are the offences. Their connection with something else has nothing to do with the offences whatever. So far from being an important element in the offence it has no connection with it whatever. A man is guilty under the laws of his country and he is liable to exactly the same penalty whether he has committed merely murder or dacoity, or murder or dacoity in connection with revolutionary conspiracy. The offence is an utterly different thing and utterly apart from the question whether it is connected with a revolutionary conspiracy. How the opinion of the Local Government comes in is this. Is the offence to be tried by a special tribunal or by the ordinary tribunals of the country? That is the question that the Local Government has to decide. Under what conditions has the Local Government to decide it? In the first place, it can only decide it if the Governor General in Council has declared that in the particular part of India to which Part I of the Bill may be applied, revolutionary or anarchical movements are rife and scheduled offences have been committed to such an extent that it is necessary to constitute a special tribunal for their speedy trial. Therefore you have got to have a part of India where it has been declared that revolutionary offences are rife and where these offences are being constantly committed before the Local Government can be called upon to decide whether it is necessary to try them by a special tribunal. But this has nothing to do with the offences; the offence that will have to be tried by that tribunal is murder, arson, dacoity, grievous hurt, or whatever it may be, exactly as it would be in any other court. It has no concern with anything else; it is merely that that tribunal will only take cognizance of any offences if the Local Government thinks that the particular offences are connected with a revolutionary movement. In fact, as one of my Hon'ble colleagues put it to me just now, what the Hon'ble Pandit and those who support him are asking

is, that the tribunal should try the very cause that has brought it into existence. That is surely impossible. The question will be whether particular offences are to be tried in the ordinary course or by a special tribunal, and on that we propose, rightly or wrongly, that the opinion of the Local Government should be final; they are to decide whether a particular offence is to go to this tribunal or to the ordinary courts, and we propose that their decision on that should be final. My Hon'ble colleague the Home Member has pointed out why it is practically impossible that the tribunal should go into the question whether the offence is connected with such a conspiracy or not. Are you going to try the man for murder, first find he has committed murder, or arson, or whatever it is, and then solemnly sit down and consider whether the murder was connected with a revolutionary conspiracy, in order to see whether the court ought to have tried it or not? Surely you are not going to do that? But perhaps my Hon'ble friend would begin by trying whether there is a revolutionary conspiracy, and after he had tried that for a year or so try the offence, which is the real question the tribunal has before it."

The Hon'ble Mr. Srinivasa Sastri:—"I rise to make an explanation; revolutionary conspiracy is a matter to be decided by the Governor General in Council and declared by notification; that will not be part of the inquiry."

The Hon'ble Sir George Lowndes:—"My Hon'ble friend is quite correct. It proceeds by stages, there is first the declaration by the Governor General in Council that a state of what I may call anarchy exists and that offences specified in the Schedule are constantly being committed; then there is a special tribunal constituted to try the offences—we are not going to constitute it *ad hoc*; we are going to constitute a special tribunal to try all scheduled offences—and then there will be a trial of an offence by that tribunal if it comes under the Schedule and in the opinion of the Government is connected with any movement endangering the safety of the State.

"Therefore, when an offence goes to that tribunal it can only go to it under the orders of the Local Government. The tribunal cannot try any of these particular offences unless, in the opinion of the Local Government, it is an offence connected with a movement endangering the safety of the State. We do not propose to leave that question for the decision of the tribunal; it is for the Local Government alone. Rightly or wrongly, that is the position.

"But we have my Hon'ble friend Mr. Sastri—I am sure he did not mean it—complaining that cases would be rushed through to conviction. Does he seriously think that, when you have got a tribunal of three High Court Judges, whom so many Hon'ble Members say they trust implicitly, cases will be rushed through to a conviction?"

The Hon'ble Mr. Srivinvasa Sastri:—"I am sorry to have been misunderstood. When I said 'rushed through' I only meant put through expeditiously."

The Hon'ble Sir George Lowndes:—"I am sorry, but I am afraid the word 'rushed' bears rather an unpleasant interpretation to my mind; I am glad the Hon'ble Member meant no more than that. And really is there any real fear of this provision being abused? You have got the conditions of a proclamation of the province, and the Local Government's opinion as to the character of the offence. There must be gross dishonesty on the part of a Local Government which wishes to try ordinary political offences by this procedure—gross dishonesty and nothing else. You have got similarly three High Court Judges to try the case. Is it to be supposed that they will sit down under this sort of thing knowing that offences which are being sent to them day after day for trial have no connection with the disturbances in the province? Is it supposed by my friend, the Hon'ble Mr. Sastri, that even a worm would not turn against this sort of thing? It is absurd, if I may say so.

"Rightly or wrongly, that is the proposal that we put to this Council that it shall be for the Government to decide whether particular cases are connected with these revolutionary movements or not, and that the tribunal will try the offence, it being no element of that offence that it is connected with an anarchical or revolutionary movement."

The Hon'ble Dr. Tej Bahadur Sapru:—"Perhaps the Hon'ble the Law Member might explain to the Council if he thinks that the tribunal will have absolutely no jurisdiction to go into that question, because it at once raises the question of jurisdiction."

The Hon'ble Sir George Lowndes:—"I am afraid I did not catch what the Hon'ble Member said, and I am unable, therefore, to reply to him, but, as I presume he was only making a personal explanation, it is perhaps not necessary for me to do so."

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, I should like

His Excellency the President:—"The Hon'ble Member is a very old member of this Council and he knows perfectly well what the rules of this Council are, and yet he is frequently infringing them. His only right is to get up on a question of personal explanation, but he is continually getting up on points which are not allowed by the rules of this Council. Is it a personal explanation that he wishes to make?"

The Hon'ble Pandit Madan Mohan Malaviya:—Yes, on the point your Lordship has been pleased to put. As a member of this Council of ten years' standing and as a student of Parliamentary proceedings, I thought that it was permissible for any member to ask for an explanation whenever a matter was not clear to him. If your Lordship will permit me to explain, what I wanted to ask the Hon'ble Member was, whether if the question of an offence being connected with a revolutionary movement will not be a matter for the court to decide, that circumstance will yet affect the sentence which a Court may pass upon the person who is tried? I should be very sorry if it should be thought that I was infringing the rules of this Council. I can assure your Lordship that I do not do so, so far as I can."

The Hon'ble Mr. V. J. Patel:—"My Lord, before I reply I should like to know whether the Court will have jurisdiction to go into the question whether the offence is connected with a revolutionary movement or not, or whether it must stay its hands and merely find that the man has committed one of the offences mentioned in the Schedule. I hope the Hon'ble the Law Member will make it quite clear whether the Court will be entitled to go into that question at all."

His Excellency the President:—"The Hon'ble the Law Member has made his speech; it is now for the Hon'ble Member to reply."

The Hon'ble Mr. V. J. Patel:—"I wish to know, before I reply, whether, according to the Hon'ble the Law Member, the Court will be entitled to go into that question at all or not? My reply will depend upon the answer."

The Hon'ble Sir George Lowndes:—"Perhaps it may be convenient for me to say that I must decline to be cross-examined in this Council by my brother lawyers."

The Hon'ble Mr. V. J. Patel:—"If that is so, I need not reply. I take it that the Court will be entitled to go into it and, therefore, my amendment is quite justifiable."

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The motion was put and the Council divided as follows:—

Ayes—15.	*Noes—35.*
The Hon'ble the Raja of Mahmudabad.	His Excellency the Commander-in-Chief.
Dr. T. B. Sapru.	The Hon'ble Sir Claude Hill.
Pandit Madan Mohan Malaviya.	Sir Sankaran Nair.
Mr. S. Sastri.	Sir George Lowndes.
Mr. R. Ayyangar.	Sir Thomas Holland.
Mr. B. N. Sarma.	Sir William Vincent.
Mir Asad Ali, Khan Bahadur.	Sir James Meston.
Mr. V. J. Patel.	Sir Arthur Anderson.
Mr. M. A. Jinnah.	Mr. W. A. Ironside.
Sir Fazulbhoy Currimbhoy.	Sir Verney Lovett.
Maharaja Sir Manindra Chandra Nandi.	Mr. H. F. Howard.
Khan Bahadur Mian Muhammad Shafi.	Sir James DuBoulay.
Sardar Sundar Singh.	Mr. A. H. Ley.
Mr. G. S. Khaparde.	Mr. W. M. Hailey.
K. K. Chanda.	Mr. H. Sharp.
	Mr. R. A. Mant.
	Major-General Sir Alfred Bingley.
	Sir Godfrey Fell.
	Mr. F. C. Rose.
	Mr. C. H. Kesteven.
	Mr. D. deS. Bray.
	Lieut.-Col. R. E. Holland.
	Surg.-Genl. W. R. Edwards.
	Mr. G. R. Clarke.
	Mr. H. Moncrieff Smith.
	Mr. C. A. Barron.
	Mr. P. L. Moore.
	Mr. M. N. Hogg.
	Mr. T. Emerson.
	Mr. E. H. C. Walsh.
	Mr. C. A. Kincaid.
	Sir John Donald.
	Mr. P. J. Fagan.
	Mr. J. T. Marten.
	Mr. W. F. Rice.

The amendment was therefore negatived.

The Hon'ble Mr. Sarma's amendment "that in clause 15, after the word 'Schedule' the words 'in connection with an anarchical or revolutionary movement' be inserted" was put and negatived.

The Hon'ble Mr. Sastri's amendment—

"That to clause 15 the following be added :—

'Provided that the offence of which he is so convicted is connected with an anarchical or revolutionary movement.'"

was by leave withdrawn.

The Hon'ble Mr. Kamini Kumar Chanda :—"My Lord, I beg to move this amendment to clause 15. I ought to explain, my Lord, that the latter part of this amendment,* I find, has been disposed of already. I shall therefore only move the first part, which runs as follows :— 10-45 P.M.

* 'Provided further that the Court shall, when so convicting the accused, record a finding that such offence is connected with an anarchical or revolutionary movement.'

'That the following proviso be added to clause 15 :—

'Provided that before convicting the accused of such other offence the Court shall give him an opportunity of showing that he is not guilty of it by recalling and cross-examining or further cross-examining any prosecution witness, as the case may be, or examining any defence witness whether such witness has been previously examined or not.'

"My Lord, I confess I do not really know why this clause has been inserted. I have been told more than once in connection with my amendments that the provisions about which I have been moving amendments are already in the Code and there is no need to insert those provisions here. If

the Council will turn to section 237 of the Criminal Procedure Code, they will see it runs like this :—

'If, in the case mentioned in section 236'—that is to say,

'If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.'

"Even if in the case mentioned just now

'the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it'.

"This section, my Lord, entirely covers the ground of clause 15. My submission is either this clause is not necessary, or if it is necessary, then you have to incorporate the other provisions from the Criminal Procedure Code. You have adopted the language of one section, and it follows that either you must omit this clause altogether or add a proviso that before the Court can convict the accused of any other offence, you must give him an opportunity to prove that he is not guilty of such offence, in accordance with the provisions of the Criminal Procedure Code, sections 227—231. Section 227 lays down that :—

'Any Court may alter or add to any charge at any time before judgment is pronounced, or, in the case of trials before the Court of Session or High Court, before the verdict of the jury is returned or the opinions of the assessors are expressed.'

"Section 229 runs thus :—

'If the new or altered or added charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.'

"And section 231 says :—

'Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to recall or resummon, and examine with reference to such alteration or addition, any witness who may have been examined, and also to call any further witness whom the Court may think to be material.'

"My submission is that in view of this section of the Code there is no necessity for this clause; but having included this clause, you ought in justice to the accused, in fairness to the accused embody those provisions which my amendment seeks to reproduce here. Otherwise some difficulty might result. The Court might feel that as we have adopted only one section, it follows that our intention was that the other sections were not to be referred to; and the Court might try a man for an offence quite different from the offence with which he was charged. I move this amendment, my Lord."

The Hon'ble Sir James DuBoulay :—"My Lord, I think that the Hon'ble Mr. Chanda has touched a spot in this Bill on which we might possibly be able to meet him. Clause 15 is, I think, necessary, and the necessity of it is proved by the discussion which has just been completed. If the Hon'ble Member had any possible doubt as to whether the Court might convict an accused person of an offence against a provision of the law which is referred to in the Schedule, although it is not proved to be, or held by the Court to be, connected with a movement directed against the State, that has been set at rest by the decision which this Council has just reached. But it was never intended to be in doubt, and the absence of any mention of the matter in the rest of the Bill shows that a clause of this kind is essential.

"On the other hand, as the Hon'ble Mr. Chanda has pointed out, you might have a man charged with arson and under this section convicted of, say, murder. In such circumstances the provisions of section 236 of the Criminal Procedure Code ought to be complied with; they contemplate

'a single act or series of acts of such a nature that it is doubtful which of several offences the facts which can be proved will constitute,' etc., etc.,

before a man can be convicted of an offence he has not been charged with, and I venture to suggest that if we modified this section in the following sense it would meet the Hon'ble Mr. Chanda, and I ask your Lordship to permit me to move the following amendment to the Bill :—

'That for clause 15 of the Bill the following be substituted :—

'At any trial under this Part, the accused may be charged with and convicted of any offence against any provision of the law which is referred to in the Schedule."

"I would point out that the result of that clause would be to make it quite clear that a Court could charge a man with and convict him of any offence which is referred to in the Schedule, while at the same time he would have the benefit of all those various sections of the Criminal Procedure Code to which the Hon'ble Mr. Chanda has referred. The Criminal Procedure Code would come into play automatically under clause 7 of the Bill."

The Hon'ble Mr. V. J. Patel:—"My Lord, I have heard the Hon'ble Member for Government, but the difficulty probably will be this. Supposing a man is charged with a certain offence under the Schedule and at the close of the case the Court finds that the man is guilty of another offence mentioned in the Schedule, then the Court can under the clause as it stands alter the charge, that is, frame a new charge and convict him. This will deprive the accused of an opportunity of cross-examining the witnesses in the matter of the new charge. That is the point my Hon'ble friend Mr. Chanda wishes to provide for by this amendment as I understand it

The Hon'ble Sir James DuBoulay:—"Has the Hon'ble Member read section 231 of the Code?"

The Hon'ble Mr. V. J. Patel:—(*After reading section*) "That meets the difficulty, I see."

His Excellency the President:—"Do you accept that, Mr. Chanda?"

The Hon'ble Mr. Kamini Kumar Chanda:—"I think, my Lord, it will meet the requirements of the case. If I understood the Hon'ble Sir James DuBoulay correctly, section 231 will also be incorporated."

The Hon'ble Sir James DuBoulay:—"It is already incorporated under clause 7 of the Bill."

The Hon'ble Mr. Kamini Kumar Chanda:—"Then the alteration which is proposed in clause 15 is that the accused—will the Hon'ble Member please repeat the amendment he suggests?"

The Hon'ble Sir James DuBoulay:—"At any trial under this part the accused may be charged with, and convicted of, any offence against any provision of law which is referred to in the Schedule."

The Hon'ble Mr. Kamini Kumar Chanda:—"I accept the amendment proposed by the Government."

The motion as amended was put and agreed to.

The motion that clause 15 as amended by the Select Committee and as further amended stand part of the Bill was put and agreed to.

The Hon'ble Sir William Vincent:—"My Lord, I move that to clause 16 the following proviso be added (it is the proviso I have just referred to):—

'Provided that a sentence of death shall not be passed in any case in which there is a difference of opinion among the members of the Court as to the guilt of the accused.'

The motion was put and agreed to.

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The Hon'ble Sir William Vincent:—"My Lord, I move that clause 16 as amended do stand part of the Bill."

The motion was put and agreed to.

The Hon'ble Sir William Vincent:—"My Lord, I beg to move that clause 17 stand part of the Bill."

10-58 P.M. **The Hon'ble Khan Bahadur Mian Muhammad Shafi:**—"My Lord, I beg to move that for clause 17 the following clause be substituted:—

'17. (1) An appeal shall lie from the judgment of the Court to a Full Bench of the High Court consisting of at least five judges.

(2) The High Court shall not have any authority to transfer any case from the Court or to make any order under section 491 of the Code or, save as provided in sub-clause (1) have any jurisdiction in respect of any proceedings under this Part.'

"A comparison of the wording of the amendment which I have placed before the Council with the wording of the original clause will make it clear to Hon'ble Members that the only change which I seek to introduce consists in giving a right of appeal to a person convicted under this Part to a full bench of the High Court. The remaining provisions of the original clause stand intact. Now, my Lord, in a case of special legislation intended to meet a particular emergency it is, I respectfully submit, unjustifiable to depart from the ordinary law of the land except to the extent to which it may be absolutely essential to meet that emergency. The question then arises whether the forfeiture of the right of appeal contemplated in the original clause is justified by the necessity of the case. We have been told during the debate on this Bill that the main object of the Bill in introducing Part I is to provide for an expeditious trial of the offence committed in tracts where anarchical or revolutionary movements may be in existence. Well, my Lord, that object is gained in two ways; firstly, by putting an end to the commitment stage, and secondly, by adopting a procedure at the trial which is more abridged than the ordinary procedure in trials under the Criminal Procedure Code. Therefore when the stage of conviction has been reached the main object which the Government had in view has already been achieved. What then is the necessity of putting an end to the right of appeal in a case like this? It seems to me that this cherished right of the people, that is to say the right which enables them to appeal against conviction in criminal cases, particularly where they are charged with serious crimes of the description mentioned in the Schedule, ought to be taken away only if there is justifiable necessity for it, and it seems to me that the main object of the Bill which the Government have in view having been achieved before the stage of conviction is reached, there is absolutely no necessity whatever for taking away that right of appeal. Then, my Lord, there is another important consideration to which I venture to invite the attention of Council. It is, I submit, in the conditions obtaining in India an axiomatic truth to say that the confidence of the people in the British administration of justice is the corner stone on which the edifice of the British Raj is built, and it seems to me that this Council should not be party to any legislation which is calculated even in the slightest degree to impair that confidence. My Lord, if the right of appeal which is deeply cherished by the people is taken away under Part I without any adequate reason, I for one have not the slightest doubt that there will be ground for that confidence being impaired, and in any case it will give opportunities to hostile critics of Government to go to the people and say 'Here is a special emergency for which the Government has provided a special procedure and has passed a special enactment; at the same time without any necessity whatever they have made away with your right of appeal.' This Council, I submit, should be very jealous in guarding the good name of Government; it should not be party to any legislation which is calculated to make the Government unnecessarily unpopular with the people; and it seems to me that this abolition of the right of appeal is such a departure from the ordinary law of the land which is calculated to make the Government unpopular with the people.

"There is another reason for which I commend my amendment to the acceptance of this Council. The amendment which was put forward by a number of my Hon'ble colleagues that conviction in the case of trials under Part I should be had only in the case of unanimity of opinion of the members constituting the special tribunal has already been rejected.

"Your Excellency, I submit that rejection has made it *a fortiori* necessary that there should be a right of appeal. It is clear to me that where one out of three Judges of the High Court is of opinion that no case has been made out against the accused, his conviction of the serious offence mentioned in the Schedule would be unjustifiable. At all events, in that case it is absolutely essential that the convict should be given a right of appeal to a full bench of five judges. For the element of doubt which the finding of one High Court Judge brings into the case—an element of substantial doubt—makes it very hard for the convict if he is to be deprived of his right of appeal. Possibly it may be said, as it was said on a former occasion, that there is no appeal in criminal trials held in the High Court. But there is a difference between the trials before the special tribunal constituted under this Act and the criminal trials before the High Court under the Criminal Procedure Code. Trials under the Criminal Procedure Code are held with the assistance of a jury. The finding of fact in the case is arrived at not by a judge, but by a jury consisting of nine or less persons by which a judge is ordinarily bound; the judge applies the law to the finding and pronounces his judgment. Even in the case of a trial by jury held in a High Court, there is a right of appeal on the ground of misdirection in certain cases. I have put this amendment before the Council for an additional reason. The Irish Crimes Act does provide for an appeal against conviction in the case of special tribunals under that Act. The Act practically stands on the same footing and therefore the precedent of the Irish Act is in my favour. I submit, therefore, that my amendment ought to be accepted by the Council on this ground. On the ground that as a matter of principle the right vested in the subject should not be taken away, unless the taking away of the right is absolutely essential for the emergency in view, on the ground of public policy which requires that this Council should not be a party to the enactment of a measure which lays Government open to hostile attacks, and thirdly, on the ground of precedent I commend my motion to the acceptance of the Council."

The Hon'ble Mr. G. S. Khaparde:—"My Lord, I have an amendment very similar to that moved by the Hon'ble Mr. Shafi. I agree in the principle, but I think my amendment is better. I propose the following clause:—

'That for clause 17 the following clause be substituted:—

'17 (1) Any person convicted by a Special Tribunal under this Act may, subject to the provisions of this Act, appeal either against the conviction and sentence of the Court or against the sentence alone, to the Court of Criminal Appeal constituted under this Act, on any ground whether of law or of fact; and the Court of Criminal Appeal shall, subject to the provisions of this Act, have power after hearing the appeal to confirm the conviction and sentence, or to enter an acquittal, or to vary the conviction or sentence. Provided that—

(*a*) the conviction shall not be varied save by substituting a conviction for some less offence, for which the Special Tribunal had jurisdiction on the trial to convict the appellant; and

(*b*) the sentence shall not be increased.

(2) The conviction and sentence as confirmed or varied by the Court of Criminal Appeal shall have effect as if it were the conviction and sentence of the Special Tribunal and shall be deemed to be the sentence of a Special Tribunal.

(3) If the appellant establishes want of jurisdiction in the Special Tribunal the Court of Criminal Appeal may quash the proceedings.

(4) The Court of Criminal Appeal shall have for the purpose of any appeal all the powers and jurisdiction of the Special Tribunal.'

"I have taken this clause from section 2 of 45 and 46 Victoria, Chapter 25, that is the Irish Act. In this section it is made clear that in trials by a jury no appeal lies. In this case there is to be no jury but there will be three judges who have to decide a case; it might be urged that an appeal would not lie. I make it clear—or rather the section in the Irish Act makes it clear

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for me—that an appeal may lie on points of fact and points of law. It gives power which is usually given to the courts, namely, to confirm the sentence or to vary it, but in varying it the power to increase is taken away This is in accordance with the Irish Act. There is also a clause No. (3) that 'if the appellant establishes want of jurisdiction in the Special Tribunal the Court of Criminal Appeal may quash the proceedings.' This, I think, requires an explanation. The Irish Act so far as I can gather and my object was that when these proceedings are taken by the Local Governments, the Chief Justice establishes a court and the accused is brought before it and tried, the accused has had no chance of saying that the Tribunal has no jurisdiction to try him for various reasons urged. There was an amendment moved, I think, that a man should have a chance of showing cause why he should not be tried by that Tribunal. That amendment has been rejected, and I have introduced it here so that a man may not take that objection, it might cause delay and defeat the object of the Bill which is a speedy trial. After the trial is finished and a man has been sentenced, the object of the trial has been accomplished.

"There is no reason why this should not be permitted. I have put it in here as it is in accordance with the precedent of section 2 of the Irish Crimes Act. The reasons why there should be an appeal have been given by Mr. Shafi. I agree with them, but I think I can add to these reasons firstly, that though there are three judges and that though they are High Court Judges and gentlemen of great eminence and long experience, still it might be urged, why do you want an appeal? It is for this reason—I do not want to take away the right of a man to appeal, it is doing here an injury to his fundamental right. The fundamental right of the subject is that his liberty shall not be taken away without a sentence, and when it is taken away it must be possible for him to appeal. If the right is taken away his liberty is infringed. There is at the same time a very strong reason why a person should be allowed to go up before the highest court with the assistance of his counsel. That being a fundamental right, I am inclined to think that there is no injury done either to the scheme of this Bill or to the objects of this Bill in permitting an appeal. On the contrary, if you permit this appeal the great advantage is that the public at large would be satisfied that the accused person has had a careful and patient hearing in the first court, and that he had a chance in the appeal court also and that whatever human efforts could do had been done for the man. While if no appeal is allowed, there would always remain a grievance; the man himself may believe that he has not been properly tried, and the world at large may say 'Oh, there were three judges and yet the man did not get a proper chance of a careful and patient hearing in the highest court' and there the thing would end. That is to say, there would be room left for people to doubt the justice of the case. To remove all these doubts and difficulties in matters of this kind, and in order to instil confidence in the public as well as in the culprit, I submit that this provision is essentially necessary. As I said before, it is not enough to be right in this world and especially in matters of doing justice, but we should also appear to be right. For these reasons I submit that an appeal should be permitted. Of course I like to put the amendment in the terms in which I have drafted it, because I think my wording makes the amendment more specific and clear With these words I submit this amendment for the judgment of this Hon'ble Council."

11-18 P.M. **The Hon'ble Pandit Madan Mohan Malaviya:**—"My Lord I support the amendment which has been moved by the Hon'ble Mr. Shafi, and I agree with the Hon'ble Mr. Khaparde that the form which he has suggested would be better. I would retain the latter portion of Mr. Shafi's amendment. I hope on a perusal of Mr. Khaparde's amendment Mr. Shafi will see the advantage of such a proposal.

"Now, my Lord, the reasons in support of this amendment have been very well stated by both the previous speakers. I have, therefore, only to add a few words in support thereof. In the first place, I would lay emphasis on the fact that an appeal is an important safeguard against injustice being done. This right has been provided in the case of criminal trials for all these decades and centuries, and it ought not to be taken away unless there is a very strong

and substantial reason for such a course being taken. This can only possibly arise in very special circumstances even during a period of war. But the situation now is entirely different. The provisions of the Bill are based upon the recommendations of the Rowlatt Committee. As they say in paragraph 182 of their Report, they have recommended in substance the procedure established under the Defence of India Act. The Defence of India Act substantially embodied the main provisions of the draft Ordinance originally proposed by Sir Michael O'Dwyer as is stated in paragraph 136 of the Rowlatt Committee's Report. Now, my Lord, in order to understand the genesis of this proposal, I must ask the attention of the Council to the following passage in that Report. The Committee say :—

'In the middle of December the Punjab Government reported to the Government of India that the doings of the returned Sikh emigrants had more than anything else engaged official attention, that the majority of these had returned expecting to find India in a state of acute unrest and meaning to convert this unrest into revolution. On the 19th of the same month the Provincial Government forwarded, for consideration and orders by the Imperial Government, a draft Ordinance dealing with the prosecution and suppression of violent crime. They asked for the very early promulgation of this Ordinance throughout the province.'

The letter of the Local Government summarised the situation, and it went on to say that the Lieutenant-Governor considered that 'it is most undesirable at the present time to allow trials of any of these revolutionaries or other seditionmongers who have been or may be arrested in the commission of crime or while endeavouring to stir up trouble to be protracted by the ingenuity of counsel and drawn out to inordinate length by the committal and appeal procedure which the criminal law provides'. His Honour, therefore, submitted for approval a draft Ordinance which provided, subject to the sanction of the Local Government to its application in these cases, '(*a*) for the elimination of the committal procedure in the case of offences of a political or *quasi*-political nature ; (*b*) for the elimination of appeal in such cases; (*c*) for the taking of security from persons of the class affected by a more rapid procedure than that prescribed by the ordinary law; (*d*) for the prompt punishment of village officers and the finding of villagers colluding with and harbouring revolutionary criminals.'

"The Lieutenant-Governor included various offences against property in addition to seditious offences and acts punishable under the Arms and Explosives Act. But 'the measure was exceptional and intended to cope with a temporary emergency'. This was the basis upon which the Government of India, with great reluctance, as the Committee point out in paragraph 140 of the Report, agreed to pass the Defence of India Act. The Committee say :—

'The Government of India was reluctant to supersede in any degree the courts and processes of ordinary law. But both in the Punjab and in Bengal the situation was rapidly deepening in gravity. The Defence of India Act, which substantially embodied the main provisions of the originally proposed draft Ordinance, was passed quickly through the Imperial Legislative Council. Its most important provisions were the appointment of special tribunals for the trial of revolutionary crimes. It allowed neither commitment proceedings to these tribunals nor judicial appeal from their decisions.'

"My Lord, the Defence of India Act thus was an enactment passed to meet the very special circumstances which came into existence owing to the war, and which were effectively dealt with by the war measure which the Defence of India Act was. That the troubles were effectively dealt with by this enactment does not admit of doubt from the Report of the Committee. The question now before the Council is, whether there is anything in the present circumstances of the country which should justify the elimination of an appeal as the Bill proposes. I submit the circumstances in which the elimination of the provision for an appeal was asked for have ceased to exist. Besides an appeal stands on a different footing from a trial. The Government have secured the object that there should be a speedy trial of certain offences, by the sections which have been already agreed to by the majority of the Council. If a man, who has been convicted, is allowed to have an appeal to a higher tribunal, no conceivable injury can arise to any interest, public or private. On the very hypothesis of the case the man will be under restraint, having been convicted by the trial court; he will be in custody. There is no danger of the man spreading any

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mischief or creating any further trouble, and if an appeal is allowed, the appeal will not take a very long time. Even if it took a month or two or three months, that will not be too long a period. But whatever the period may be, it will not affect any interest, public or private. On the other hand, the necessity for an appeal is patent, and should not require any argument in support of it before this Council. But unfortunately, as the Government have deliberately proposed to deprive persons who may be tried under this Part of the right of appeal, the point has to be argued. And, my Lord, all I would say is that too much stress has been laid on the fact that the court will be constituted by three judges of the High Court and that confidence should be felt in the correctness of the judgment of three such judges. In the first place, my Lord, as my friend the mover of the amendment has pointed out, the decision to retain section 14 as it stands in the Bill is an important decision. It seeks to legalise again a provision which is repugnant to all ideas of justice which we have learned hitherto to appreciate and admire. It is repugnant to the rule that an accused person should have the benefit of doubt. The section that has been agreed to deprives a man who may have the misfortune of being tried under this Part of the Act of that benefit in disregard of all considerations of justice and fair play. That makes it all the more necessary that there should be an appeal provided against a judgment passed in accordance with section 14. The proviso to clause 16, which has been accepted by the Government or rather proposed and agreed to by the Government, has secured that a sentence of death shall not be passed where the court is not unanimous regarding the guilt of the person tried. That is one safeguard, a very valuable safeguard, but that is only one safeguard. It does not deal with other sentences which, though they may not be the extreme sentence which the law can inflict upon a man, may be equally severe, and in some cases even more severe, than a sentence of death. For transportation or the taking away of a man for a very long period of years from those near and dear to him, from his surroundings, from his country, may be as painful, and sometimes even more painful to a man than being hanged. If there is no appeal provided, the result will be that a man may suffer the most severe punishment, the most serious and long lasting deprivation of liberty at the hands of this tribunal, and yet he will have no remedy. My Lord, the three judges of the High Court who will form this prospective tribunal, will, after all, be human judges who are not infallible, and we should remember that the judgments of many judges of the High Court in this country, judgments pronounced by benches consisting of two High Court judges have been upset on numerous occasions by the Privy Council. On numerous occasions judgments on questions of fact arrived at by two judges of High Courts have been set aside by the Privy Council. This has been so largely in civil cases. In one criminal case also which went up from Madras, the Privy Council upset the judgment of two judges of the High Court of Madras. But criminal cases involve also questions of law. The offences which the special tribunal will be called upon to deal with will be offences a decision relating to which will in many cases involve not merely questions of fact, but also questions of law, particularly offences relating to sedition—sections 124-A and 153-A. Now, my Lord, if experience has established that judgments of two judges of the High Courts have frequently been upset by judges of the Privy Council, if in England also in numerous cases judgments of first courts have been upset by the court of appeal, even by the House of Lords in appeal, does it not stand to reason that we should not place too much reliance on the circumstance that three judges of a High Court have dealt with a case? Will it not be wiser, more humane, more reasonable to provide an appeal so that the correctness of the judgment of the special court might be properly tested in a regular appeal? I submit, my Lord, that the case for accepting the amendment which has been moved is a very strong one. It hardly requires to be supported by authority. But there is the precedent of the Irish Act to which attention has been drawn. In that Act Parliament considered it necessary that there should be a provision for an appeal, though there also the trial was to be before three judges of the High Court. I draw attention to a passage from a speech by Sir William Harcourt, who introduced that Bill, wherein he pointed out that, in order to create confidence in the system of trial which was

provided in the Prevention of Crimes Act, the Government had taken care to provide important safeguards against injustice. He said :—

'The court will sit without a jury. They will decide the questions both of law and of fact, and their judgment shall be unanimous. Well, then, in order to give every security and confidence to this tribunal, we give in all these cases an appeal to the Court of Criminal Cases Reserved—[I believe that is what it is called in Ireland. It is a body consisting of the residue of the judges of the Supreme Court. I believe that the ordinary quorum of that court is five judges, and upon the appeal the judgment will be by a majority of the court; so that you will see that no man can be convicted under these circumstances, without the assent of six judges],—three in the court below, and three in the court above'.

"The Council will note that the appeal court was to consist of five judges, but it was provided that the determination of the appeal would be by the determination of the majority of the judges, a provision which Mr. Khaparde proposes should be introduced in the proposed amendment. My Lord, Sir William Harcourt pointed out that there was another security against error and injustice. I refer to it to show how anxious Parliament was that there should be every safeguard against injustice.

"Sir William Harcourt said :—

'Well we have another security. There will be an official shorthand writer, and the notes will go to the court above; but the court above may, if they think fit, hear other evidence and call other witnesses; so that, in point of fact, at their discretion, they may have a re-hearing of the case; and thereupon the court may either affirm the sentence of the court below, or they may alter the sentence,—that is to say, in the way of diminution and not of increase'

"Such was the care taken by Parliament in enacting a special procedure for the fair and impartial trial of those unfortunate persons who might be connected with or suspected of being connected with a certain class of crime in Ireland. My Lord, this Council is legislating in very different times, and I submit that it is very necessary that a provision for appeal should be included in the Bill.

"There is another aspect of the case to which I will draw attention. I have said that judgments of divisional benches of the High Courts have often been upset on points of fact. The Council will also remember that the judgment of at least one tribunal constituted under the Defence of India Act at Lahore was upset by the Government of your Excellency's predecessor in an important case which came up before them. As I mentioned on a previous occasion, so far as I remember the facts, 24 persons were sentenced to death by that tribunal. The tribunal did not consist of High Court judges, but they were high judicial officers, one of them a district judge, and two others, and 24 persons were sentenced to death by that Tribunal. The persons so condemned made an application under section 401 of the Criminal Procedure Code to the Lieutenant-Governor of the Punjab. The Lieutenant-Governor of the Punjab rejected their applications. Then they applied to the Government of India, and the Government of India changed the sentences of death in the case of 17 persons to other sentences. It may be said that we may expect that a future Executive Government will also act similarly if circumstances will justify its doing so. But, my Lord, I would ask your Lordship and the Council to consider whether it is right, whether it is proper, to leave the decision of such important questions, which affect the lives and liberties of individuals, to be disposed of by a Member of the Executive Government, assisted though he may be by his colleagues. It may happen that a particular Home Member may be more inclined to look into those voluminous cases that might come up as applications under section 401 than another; but it may also happen that a case may not be gone into with all the care, with all the consideration, that it may require. The Home Member, who must in the first instance deal with such cases, might feel that he ought not to sit in judgment upon three judges of the High Court who had dealt with these cases. If the matter is taken up, even before the Executive Council as a whole, I submit that is not a body which would be in a position to deal with the questions raised as an Appeal Court would be.

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"For these reasons I submit, my Lord, that there should be a clear provision that from all judgments of the Special Court the persons convicted may

appeal to a tribunal such as is proposed by the Hon'ble Mr. Khaparde and the Hon'ble Mr. Chanda, and I hope that this amendment will receive the most serious consideration of the Government and that it will be adopted. If it is adopted, it will be a very important safeguard against injustice. If it should, unfortunately, meet with the fate which most other amendments have met with, the Bill will stand, my Lord, much more objectionable than was the Irish Bill of 1882."

The Hon'ble Sir William Vincent:—"My Lord, there are three other Members, I think, who have amendments on this clause. It would save time, if they are going to speak, that they should speak to them now."

His Excellency the President:—"Mr. Shukul is not here."

The Hon'ble Rao Bahadur B. N. Sarma:—"My amendment stands on a somewhat different footing, my Lord, and I would like to reserve my remarks. I ask for a Court of Appeal only when there is a difference of opinion."

The Hon'ble Mr. Kamini Kumar Chanda:—"My amendment is also somewhat different. I ask for a Court of Appeal only in case of a death sentence."

The Hon'ble Sir William Vincent:—"Very well, my Lord. The Hon'ble Members are of course entitled to hold up their speeches until they like to make them.

I want first to refer to the recommendations of the Committee. They, being themselves judicial officers, state:—

'Coming now to the measures themselves, we are of opinion that provision should be made for the trial of seditious crime by benches of three Judges without juries or assessors and without preliminary commitment proceedings or appeal . . . . . As regards the procedure and absence of right of appeal, we think it essential that the delay involved in commitment proceedings and appeal be avoided. It is of the utmost importance that punishment or acquittal should be speedy both in order to secure the moral effect which punishment should produce and also to prevent the prolongation of the excitement which the proceedings may set up.'

"It was with this object in view that they proposed a particularly strong court of three High Court judges. Moreover, they say 'As the right of appeal is taken away, the tribunal should be of the highest strength and authority.' The one object, therefore, that they had in view was to provide for a very strong court and an expeditious trial. We have accepted those recommendations and I really can see no reason to reconsider the position that we have taken up. If it had been proposed to have an appeal in the ordinary way, we should not have taken the trouble to have selected a tribunal of three High Court judges. It was for that reason that judges of this standing were put on to the original court. It is assumed that these trials will always be taking place in normal circumstances. I want to put it to the Council that this is really not so and that Part I of the Bill will only come into operation in abnormal circumstances and when revolutionary crime is dangerously prevalent, and then only in selected areas where urgent measures are necessary.

"It has been frequently said that this right of appeal is a fundamental right. Well, my Lord, I have never been able to understand why it is a fundamental right or anything of the kind. There is no right of appeal in many cases in this country, and there is certainly no right of appeal in England. If there was anything fundamental in it, there would be a right in all cases. The right, as I understand it, really arose from a suspicion as to the capacity of the court of original jurisdiction and in order to avoid any danger arising from that source. Under the Bill we have created a court, as I say, of the strongest character possible. I think really that three

judges of the High Court are a much stronger court than any accused would get in an ordinary case before a Sessions Judge and assessors. In most cases an accused would be tried by a Sessions Judge and assessors, and subsequently he would have a right of appeal, if convicted, to two High Court judges; no appeal would be allowed further than that.

"Complaint has been made of particular cases which were tried under the Defence of India Act. Well, all I can say is that that was a point which, I understand, the framers of the Report had in view when they proposed a stronger and better qualified tribunal than those which were constituted under that Act. I doubt very much whether Irish conditions can be accepted as a guide. The special courts there were constituted for very different reasons owing to the perversity of juries. Further, every man in Ireland was entitled to be acquitted unless he was convicted by the unanimous verdict of the jury, and for that reason when they changed the procedure, they put in further safeguards than have been customary in India.

"I would point out finally that the practical difficulties in the way of establishing a court of appeal would in my judgment be almost insuperable.

"The only other point to which I need advert is the suggestion made that a number of men were convicted wrongly in a particular case that was tried, I think, in Lahore, and that the remedies that exist at present for setting that error right are not provided under this Bill."

The Hon'ble Pandit Madan Mohan Malaviya:—"I did not suggest that it would not exist. I suggested that it was not a sufficient and satisfactory remedy."

The Hon'ble Sir William Vincent:—"My Lord, if there was any mistake in the decision or the sentence in that case—a fact about which there is considerable room for doubt—the same remedy is preserved under the Bill as was given to those men, for a man will have the same right to petition for mercy under section 401 to the Local Government and then to the Governor General in Council, as in ordinary cases. The difference will be that instead of being tried by a tribunal under the Defence of India Act, he will be tried by a tribunal consisting of three High Court judges; and I know of no case where the decision of three High Court judges is open to appeal."

The Hon'ble Khan Bahadur Mian Muhammad Shafi:—"My Lord, I venture to submit that in putting forward the case on behalf of the Government the Hon'ble the Home Member has not met a single one of the arguments that I ventured to submit in support of my motion. The first point taken by him was that this tribunal which the Bill sought to establish for the trial of these cases was a tribunal of very high standing. The tribunal may be a tribunal of very high standing, but what has that got to do with the question of taking away the right of appeal of the convict against the finding of such a tribunal? We know full well that these tribunals of high standing that the Hon'ble the Home Member has referred to have sometimes gone wrong, their judgments have had to be reversed by full benches of the very court of which the judges were members or by their Lordships of the Privy Council, or have been dissented from by judges of equally high standing in the other Provinces of India. Surely the mere fact that a person is a judge of the High Court, or that a bench of the High Court consists of two or three judges, is no guarantee of infallibility; and in the case of the trial of criminal cases of such grave importance as those which are mentioned in the Schedule, the mere fact that the judges presiding over these tribunals are judges of high standing is neither here nor there, so far as a man's right of appeal is concerned.

"Then the Hon'ble the Home Member said that there will be three High Court judges constituting this bench. That is no reply at all to the case

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which I put before the Council. Supposing of these three judges two are in favour of conviction and one is in favour of acquittal, then how can you say that this tribunal consisting of three High Court judges, not agreed in the final verdict, is a tribunal whose opinion ought to be given the same weight as if the three judges agreed in their final judgment? In such a case as this, that is to say, in case of a difference of opinion, you have only the majority of one judge—that is all; so that there is the opinion of one judge against the opinion of the other judge, and it is simply because there is in addition the opinion of one other judge that the accused is to be deprived of his right of appeal. It seems to me that this state of things is opposed to all right principles of trial of criminal cases.

"Then the Hon'ble the Home Member was pleased to say that there is no right of appeal in many cases in accordance with the law as it at present obtains in India. But so far as I am aware—and if I may venture to say so I am in a position to say that I know something about the law of appeal in criminal cases after 27 years' practice at the Bar—the Criminal Procedure Code deprives a convict of the right of appeal only in two classes of cases, one class being of cases which may be tried summarily under a certain Chapter of the Criminal Procedure Code, and the second in cases where a magistrate of the 1st class awards a punishment of imprisonment for less than a month or punishes merely with a fine below a certain amount. Well, the deprivation of the right of appeal in such cases is based on a particular ground. But even in these cases there is the power of revision in the High Court, who can revise the sentence. So that in this Bill you propose to take away the right of revision of the High Court, you deprive the convict of his right of appeal—not in petty cases, but in cases of a very serious nature—almost every offence specified in the Schedule is an offence of a very serious nature. So that this argument advanced by the Hon'ble the Home Member will not hold water for a single moment.

"Then the Hon'ble the Home Member was pleased to say that a man charged with any of the offences mentioned in the Schedule would ordinarily be tried by a Sessions Judge, and then he would have an appeal to a division bench of the High Court consisting of two judges. I cannot, with all deference to the Hon'ble the Home Member, see the point of this argument so far as the motion before the Council is concerned. No doubt he would, in the first instance, be tried by a Sessions Judge. But it must be remembered that he would be tried by a Sessions Judge with the assistance either of a jury or assessors, so that the Sessions Judge there will have the assistance of certain other persons also in coming to his conclusions. Then the accused person will have his appeal to the High Court, so that the case will have been heard by two distinct courts.

"Here the case is heard only by one court and the decision of that one court is made final even in cases where the judges presiding over the court may differ in their opinion. So the two cases are not identical. Then the Hon'ble the Home Member told us that there would be difficulties in the establishment of a court of appeal. I for one cannot see any difficulty at all. Almost all the High Courts in India are of sufficient strength to permit of a court of appeal being constituted in order to hear an appeal against a special tribunal in these cases; and of course the final argument put forward that there is an appeal to mercy, that is to say, to Government, that of course

The Hon'ble Sir William Vincent:—"May I explain: I merely put forward that with reference to a particular remark made by the Hon'ble Pandit Malaviya."

The Hon'ble Khan Bahadur Mian Muhammad Shafi:—"The Hon'ble the Home Member admits that this of course can be no substitute for a right of appeal, and therefore I need not press that part of my argument

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I submit that the position which I took up in the first instance remains unanswered, and I therefore respectfully ask the Council to accept my amendment."

The motion was put and the Council divided as follows :—

Ayes—16.	*Noes—36.*
The Hon'ble Raja of Mahmudabad.	His Excellency the Commander-in-Chief.
Dr. T. B. Sapru.	The Hon'ble Sir Claude Hill.
Pandit M. M. Malaviya.	,, Sir Sankaran Nair.
Mr. S Sastri.	,, Sir George Lowndes.
Mr. R. Ayyangar.	,, Sir Thomas Holland.
Mr. B. N. Sarma.	,, Sir William Vincent.
Mir Asad Ali Khan Bahadur.	,, Sir James Meston.
Mr. V. J. Patel.	,, Sir Arthur Anderson.
Mr. M. A. Jinnah.	,, Mr W. A. Ironside.
Sir Fazulbhoy Currimbhoy.	,, Sir Verney Lovett.
Maharaja Sir M. C. Nandi.	,, Mr. H. F. Howard.
Raja of Kanika.	,, Sir James DuBoulay.
Khan Bahadur M. M Shafi.	,, Mr. A. H. Ley.
Sardar Sundar Singh.	,, Mr. W. M. Hailey.
Mr. G. S. Khaparde.	,, Mr. H. Sharp.
Mr. Kamini Kumar Chanda.	,, Mr. R. A. Mant.
	,, Major-Genl. Sir Alfred Bingley.
	,, Sir Godfrey Fell.
	,, Mr. F. C. Rose.
	,, Mr. C. H. Kesteven.
	,, Mr. D. deS. Bray.
	,, Lt.-Col. R. E. Holland.
	,, Surgeon-General W. R. Edwards.
	Mr. G. R. Clarke.
	Mr. H. Moncrieff Smith.
	Mr. C A. Barron.
	Mr. P. L. Moore.
	Mr. M. N. Hogg.
	Mr. T. Emerson.
	Mr. E. H. C. Walsh.
	Mr. C. A. Kincaid.
	Sir John Donald.
	Mr. P. J. Fagan.
	Mr. J. T. Marten.
	Mr. W. J. Reid.
	Mr. W. F. Rice.

The amendment was therefore negatived.

His Excellency the President :—" Shall I put your amendment,* Mr. Khaparde ? "

The Hon'ble Mr. G. S. Khaparde :—" Yes, my Lord."

The motion was put and negatived.

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*That for clause 17 the following clause be substituted :—

"17. (1) Any person convicted by a Special Tribunal under this Act may, subject to the provisions of this Act, appeal either against the conviction and sentence of the court or against the sentence alone, to the Court of Criminal Appeal constituted under this Act, on any ground whether of law or of fact; and the Court of Criminal Appeal shall, subject to the provisions of this Act, have power after hearing the appeal to confirm the conviction and sentence, or to enter an acquittal, or to vary the conviction or sentence. Provided that—

(*a*) the conviction shall not be varied save by substituting a conviction for some less offence, for which the Special Tribunal had jurisdiction on the trial to convict the appellant; and

(*b*) the sentence shall not be increased.

(2) The conviction and sentence as confirmed or varied by the Court of Criminal Appeal shall have effect as if it were the conviction and sentence of the Special Tribunal, and shall be deemed to be the sentence of a Special Tribunal.

(3) If the appellant establishes want of jurisdiction in the Special Tribunal, the Court of Criminal Appeal may quash the proceedings.

(4) The Court of Criminal Appeal shall have for the purpose of any appeal all the powers and jurisdiction of the Special Tribunal.

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His Excellency the President:—"In that case Mr. Khaparde's amendment No. 34, which was put off,* also fails."

The Hon'ble Rai Bahadur B. D. Shukul's amendment to the following effect was not put owing to his absence :—

'That for clause 17 the following clause be substituted :—

'17. (1) The accused shall have the right of appeal on facts and on points of law to a Full Bench or Full Court of Judges of the High Court consisting of not less than five judges excluding such of them as formed the court which passed the sentence.

(2) In case the High Court does not consist of five judges excluding the judges who formed the court the Appellate Court shall consist of judges of the High Court exercising jurisdiction over the area and some other High Court with the consent of the Chief Justice of the latter.'

12-1 A.M. **The Hon'ble Rao Bahadur B. N. Sarma :**—"My Lord, I beg to move—

'That to clause 17 the following be added :—

'Provided that where the decision of the court is that of a majority of the judges presiding at the trial an appeal shall lie to a Full Bench consisting of not less than five judges of the High Court and where the High Court consists of a smaller number of judges than five the appeal shall be transferred to a High Court consisting of five or more judges.'

"The reason why I ask that this should be separately put is that it stands on a higher and somewhat different footing from the amendments which have been just disposed of. I do not ask for a right of appeal in cases where the three judges constituting a tribunal are unanimous in convicting the accused. It might be said that inasmuch as the accused has the benefit of a specially strong tribunal consisting of three High Court judges, there is nothing unfair in depriving him of the ordinary right of appeal to which he would be entitled under the ordinary procedure. But, my Lord, the same cannot be said where there is a difference of opinion between the judges on the vital question of the guilt or innocence of the accused. I, therefore, submit that although Government might not have been able to see eye to eye with the amendments on the previous question, they might be pleased to consider as to whether at least in those cases where there is a majority judgment alone a right of appeal should not be conferred, and I have one or two other strong reasons to urge in favour of my proposition ; one is although these offences are triable before a special tribunal on the ground that they are connected with anarchical or revolutionary crime, we know from the tenor of the discussion that has preceded that the courts are not to adjudicate as to whether the offences are really connected with revolution or anarchy. So we are to take it from the Local Government's decision that the tribunals will have jurisdiction over offences unconnected with this revolutionary or anarchical movement, although it may be proved clearly that those offences are unconnected with anarchical or revolutionary movements when once the machinery is started.

"Therefore is it right, I would ask, that the accused in such a case should be deprived of the ordinary rights simply because it so happens that the machinery was moved owing, it may be, to a mistake of the Local Government's or the officer who advised them on questions of fact as to whether an offence was connected with a revolutionary movement or not? The third point is that as the Schedule stands it need not be an anarchical or revolutionary movement. It may only be a case where the safety of the State is considered to be affected by reason, it may be, of factious fights between two sections of the community. I put it to the Council whether it is fair that these persons should be brought within the purview of this Act in this manner and that they should be deprived of the right of appeal which they would have had otherwise. It would be cruel if hundreds of persons had to undergo long terms of imprisonment or transportation because the Local Government or the official who advised them was of opinion

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* See page 10 *et seq.*

that their offences were connected with the safety of the State. As regards the invulnerability of the judges, there was only recently a case which was taken to the Privy Council when their Lordships were of opinion that the man should not have been convicted. The Privy Council differed from the High Court entirely, and their judgment shows that evidence of a particular nature should not have been admitted. After all judges are liable to err like others, they do not vary in any considerable degree from others, and they should not be elevated to the position of gods in the Hindu mythology. We are reminded constantly of the Rowlatt Committee's Report as if that Report has the sanctity of the Vedas, the Bible or the Koran. We are constantly told that the Rowlatt Committee said this or that, could there be any greater authority? We have here a tribunal of three judges, could there be anything better? These arguments are entitled to some respect, but I think too much has been made of them. These ancient creeds, which have supported doctrines which modern science has taught us it is not quite safe to follow, have been implicitly followed for ages, but are now beginning to be questioned. I think that too much reliance should not be placed on these reports and that on points where the judges differ a right of appeal should be allowed, and I hope the Government will give way here. As regards the second part, it was said that there was some practical difficulty in the way of constituting an appellate tribunal; the Government have heard what can be said against the proposition, and I hope that there will be no insuperable objections to transferring the appeal to a High Court where there are more than five judges. I have provided for that in the second part of that Resolution and I trust that the principle of the first part will be accepted."

The Hon'ble Pandit Madan Mohan Malaviya:—"I have shown that it was on the recommendation of the Lieutenant-Governor of the Punjab that there was no provision for an appeal in the rules made under the Defence of India Act. So far as the Rowlatt Committee are concerned, all that they say on the subject is as follows:—

'As regards the procedure and the absence of right of appeal, we think it essential that the delay involved in commitment proceedings and appeal be avoided. It is of the utmost importance that punishment or acquittal should be speedy, both in order to secure the moral effect which punishment should produce, and also to prevent the prolongation of the excitement which the proceedings may set up.'

"I submit that the argument is singularly weak when it is applied to an appeal. The delay of a month or two which an appeal may involve in actually inflicting the punishment which has been ordered cannot reduce its moral effect. Nor is the apprehension that any excitement caused by the proceedings might be prolonged till the pendency of the appeal entitled to serious consideration. Whatever value there may be in this argument, it would apply to the proceedings in the trial court, but would not apply at any rate to an equal degree to the proceedings in appeal. For these reasons I hope that the Government may yet see their way to accept this amendment. May be, I am hoping against hope. But we cannot abandon the hope that the life or liberty of a fellow-subject will not be taken away without giving him the opportunity of having his case considered by a court of appeal. It is not right that such drastic provisions as the Bill contemplates should be enacted without the safeguards so necessary to guard against miscarriages of justice."

The Hon'ble Sir William Vincent:—"I can add very little to what I said last time on this matter. I will draw attention to the conditions under which this Part of the Act will come into operation. It is this: 'If the Governor General in Council is satisfied that in the whole or any part of British India anarchical or revolutionary movements are being promoted and that scheduled offences in connection with such movements are prevalent to such an extent that it is expedient in the interests of the public safety to

provide for the speedy trial of such offences'. In these circumstances, and in these circumstances alone, will this Part come into operation. It is in circumstances of that character that we seek to have one expeditious and final trial before the best tribunal that we can introduce."

The motion was put and negatived.

12-13 A.M. **The Hon'ble Mr. Kamini Kumar Chanda**:—My Lord, I move my amendment which runs as follows:—

'That the following further proviso be added to clause 17:—

'Provided further that—

(*a*) The accused shall have the right of appeal both on facts and on points of law from a capital sentence to a full bench or full court of judges of the High Court, consisting of not less than five judges, none of them having formed the court which passed such sentence. In case there are not five judges in the High Court, excluding the judges who passed the sentence, the Appellate Bench shall be formed of judges of the High Court in question and some other High Court with the consent of the Chief Justice of the latter; and

(*b*) On a point of law being reserved by the court on application by the defence or on a certificate being granted by the Advocate-General attached to the High Court concerned, and in cases where there is no such Advocate-General, on a certificate by any Advocate-General, the matter shall be considered by such full bench or full courts composed as aforesaid.'

"My Lord, the Council will see that the request I make here is still more limited than that of my Hon'ble friend Mr. Sarma. First I confine my request only to the case of capital sentence. Now here I think I can appeal to the Hon'ble the Home Member to legitimately follow what he himself is pleased to concede in reference to sentences of death when there is no unanimity among judges. He accepted the amendment that when the judges are not unanimous regarding the guilt of the accused, the sentence of death shall not be passed. But, my Lord, there is yet another case. Supposing the judges are agreed about the guilt of the accused but are not agreed upon the sentence to be passed, two are for death sentence and one for transportation. In that case, my Lord, it is necessary that we should take this case into consideration, and the only thing to do is to refer the appeal to a full bench. I, therefore, appeal, my Lord, to the Hon'ble the Home Member at least to accept this portion. I leave it to him to decide what the composition of the court should be.

"Then the second part of my amendment is this:—

'On a point of law being reserved by the court on application by the defence or on a certificate being granted by the Advocate-General attached to the High Court concerned, and in cases where there is no such Advocate-General, on a certificate by any Advocate-General, the matter shall be considered by such full bench or full courts composed as aforesaid'

"My Lord, on a former occasion on a complaint of my Hon'ble friend Pandit Malaviya that by this Bill you are taking away the right of appeal, the Hon'ble the Law Member remarked that this right of appeal in criminal cases did not exist in High Courts' decisions. This is what he said, my Lord:—

'There is no appeal in a criminal case in India where the case has been tried in the High Court in a criminal sessions. There is no appeal, then, why? Why have we adopted in India from very early times the right of appeal in criminal cases from the district courts, from mofussil judges, but not where the case is tried in the sessions of the High Court? We have juries in the districts just as much. But there is no appeal from a criminal trial in the High Court because of the higher status of the judges.'

"Then I interrupted the Hon'ble Member and asked him if it was not practically an appeal from decisions of a High Court on a certificate by the Advocate-General or on a point of law reserved? And the Hon'ble the Law Member replied as follows:—

'I am afraid my Hon'ble friend is not quite correct. He will, no doubt, remember clause 25 of the Letters Patent. It reads thus (I am reading from the Calcutta one):—

'And we do further ordain that there shall be no appeal to the High Court of Judicature at Fort William in Bengal from any sentence or order passed or made in any criminal

trial before the courts of original jurisdiction which may be constituted by one or more judges of the said High Court. But it shall be at the discretion of any such court to reserve any point or points of law, for the opinion of the said High Court.'

"Now leaving this part alone, my Lord, from what was said on the last occasion, I think I may infer that if I can show that there is some power of appeal or revision from a decision of the High Court, he will be pleased to allow it in this case also. His ground was, there is no right of appeal from the decision of the High Court, and therefore we cannot grant a right of appeal in this also. I shall show now that we can have an appeal practically though in name revision to a full bench in two cases, first where there is a point of law reserved by the court at the request of the defence; and secondly, where there is a certificate by the Advocate-General. Now the portion which the Hon'ble the Law Member read out the other day was clause 25 of the Letters Patent. There is clause 26, which he did not read and which says:—

'And we do further ordain that, on such point or points of law being so reserved as aforesaid, or on its being certified by the said Advocate-General that, in his judgment, there is an error in the decision of a point or points of law decided by the court of original criminal jurisdiction, or that a point or points of law which has or have been decided by the said court, shall be further considered, the said High Court shall have full power and authority to review the case or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the court of original jurisdiction, and to pass such judgment and sentence as to the said High Court shall seem right'.

Therefore, my Lord, you will see that there are two sets of circumstances under which even a decision of the High Court in a criminal case is liable to be reviewed by the High Court There are many cases, my Lord, which can be cited in support of my contention, and I shall place before the Council a very well-known case which has an important bearing on the point in question. There is a case reported in I. L. R. XVII, Calcutta, page 642, Queen Empress *vs.* O'Hara. In this case two soldiers of the Leinster Regiment were put up for trial on a charge of murder. The case was tried by Justice Norris and a special jury of Europeans. The jury found O'Hara guilty and sentence of death was pronounced upon him. Thereafter the Advocate-General gave a certificate that there was an error of law and the matter was referred to a full bench. Then what did the court do? I will read the last portion of the judgment of the full bench:—.

'In the view we take of the case, it is unnecessary to deal with the argument for the prosecution as to the powers of the court acting under section 26 of the Charter. We take it to be clear that in case of misdirection such as this and of improper reception of evidence such as took place in the present case, this court may and ought to exercise its power of review.'

"Then, after delivering the judgment, the court (the judges forming the full bench) sat to deal with the case on the evidence as it appeared from the notes of Mr. Justice Norris. Then the court on the evidence quashed the conviction and set aside the conviction and sentence.

"What is it, my Lord, if not an appeal? Therefore, my Lord, the Hon'ble the Law Member was not correct in saying that there is no appeal from the decision of a High Court. I submit, my Lord, I do not ask for more than this. Let us have the same power, that is with regard to the decision of the High Court here. I therefore submit, my Lord, that if we can find that there is a point of law reserved in a case or if we can get a certificate from any Advocate-General that there is an error in the judgment, such a case ought to be reviewed by a full bench. That is my submission, and the Hon'ble Pandit Malaviya has fully explained the matter from our point of view. In the case decided by the Madras High Court and quoted by the Hon'ble Pandit and mentioned by the Hon'ble Mr. Sarma, I think I could mention another fact in this connection, that in this case the Privy Council not only set aside the judgment of the Madras High Court, but by that decision they overruled the decision of a full bench of the Calcutta High Court, which is reported in I. L. R. 27, Calcutta. Therefore, not only the decisions of two judges, but the decisions of five judges have been set aside by the Privy

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Council. I submit in a case like this where we are taking away every privilege possessed by persons under ordinary trial, it is very essential that this privilege at any rate ought to be conceded. I ask the Hon'ble the Home Member to consider this matter and allow my amendment to go forward."

The Hon'ble Mr. M. A. Jinnah:—"The arguments, my Lord, and the earnestness with which Mr. Chanda has presented them are such that they might melt the heart of anybody, and if I were a judge and he were to appear before me, I think he would win most of his cases; but I feel that the Government is sitting there hardhearted, absolutely determined not to yield. Nothing seems to move Government in the matter of these amendments. Amendment after amendment has been moved and been rejected. I am beginning to think, my Lord, at the end of these two days, whether it is not a sheer waste of public time that these amendments should be formally talked about in this fashion and rejected. Perhaps it would be better, my Lord, in the interests of public time if the Government declared once for all that these are the small minor amendments of yours which we are prepared to accept; as to the rest we have made up our mind and therefore, if you like to go on you can go on, but we have got the majority and they are going to be rejected. If that were declared, it would save a lot of time and put an end to this agony—it must be an agony to the Government; certainly it is an agony to me, to sit here and see this mockery of debate going on for two days and every amendment is rejected. Now, my Lord, what is the position? The position is this. We are told in the first instance that the Governor General in Council will notify that this Part I is to be applied to a particular area. The Governor General in Council is to decide as to the revolutionary movements according to the dictionary meaning. Very well, granted. And we are told that the Local Government will then apply to the High Court for a special tribunal, and we are told that when that tribunal is constituted, it is going to be governed by special rules of evidence, and procedure not normal rules of evidence, not normal rules of procedure, but extraordinary rules of procedure, and certainly abnormal rules of evidence. Then we are told that this tribunal can sit *in camera* in effect. Then we are told that this tribunal will have no jurisdiction to go into the question whether a crime with which a person is charged is connected with revolutionary movement or anarchical movement. Then we are told that the judgment of that tribunal shall be final and no appeal shall lie. Then we are told that even if there is a difference of opinion, no appeal shall lie. Now, my Lord, we come to the last straw. There is enough to break the camel's back, and that last straw is, will you or will you not agree to a higher tribunal as a corrective, as a revisional tribunal? I quite agree with the Hon'ble the Law Member that the Bill does not give the right of appeal, but it gives the right of revision. When the higher tribunal revises it has got the right of review, and I think Mr. Chanda was a little confused on that point. In reviewing it may go into the whole case, but there is a distinction between the right of appeal and the right of revision, and so to that extent the Hon'ble Member is correct, but what Mr. Chanda is asking for is revision and are you going to deny that also? On what ground? Because the Rowlatt Committee has said so? But, my Lord, is the Government of India going to surrender its judgment to the Rowlatt Committee? Is the Council going to surrender its judgment as a whole to the Rowlatt Committee? Surely, my Lord, this Rowlatt Committee has not acquired that sanctity and that infallibility. I ask the Government still to consider this. We know that in cases of a trumpery character, of a civil nature, to the amount of ₹10,000 of property value, you can appeal against the judgment of the High Court judge who tries it, and we have known times out of number when there were questions of law, and there were full benches of three and five judges on trumpery civil questions involving more than ₹10,000 which were taken to the Privy Council. Well, my Lord, when a question of ₹10,000 is involved you have got these rights, but where you have a question of life and death, where you have laws of an exceptional character which are admittedly subversive of ordinary procedure, of ordinary principles of law

and justice, intended for a special peculiar case, are you going to be so hard as to deny to that criminal, as Mr. Sastri very well put it the other day, even the opportunity to carry his case as far as he can and prove his innocence if he can. Why should that revision right be denied to him? Under the ordinary Criminal Procedure Code in cases of a trumpery character—now I am talking of criminal cases—what do you find? An order is made by the magistrate, an appeal is carried to the Sessions Court and it is carried to the High Court. You have three benches of three courts dealing with that case and the object of it is not that the High Court judges are eminent lawyers and therefore it is a very good bench and therefore you do not want another bench. I do not for a moment say that even a revision court is infallible. Of course if you go on arguing like this, there is no finality, but the important question is this, that if you have one tribunal that has decided a particular question and you have an appeal or a revision, you have a different tribunal that brings its mind afresh to bear upon that particular case, and that is the importance of having a second tribunal. They may be all High Court judges, but you have a different tribunal. My Lord, I do not wish to keep the Council any more at this late hour, but I really do press this upon you, that you should, in fairness even to these revolutionaries, these anarchists against whom you feel so bitterly, and I assure you I feel equally bitterly, give them a fair chance and let them have at least the revision."

The Hon'ble Dr. Tej Bahadur Sapru:—"My Lord, it seems to me that the amendment of the Hon'ble Mr. Chanda is, in one material respect, very different from the amendments which we have been considering this morning. My Lord, the Hon'ble Mr. Chanda wants that in capital cases the accused shall have the right of appeal both on facts and on points of law, and, in so far as his amendment is confined to cases of capital sentence, it has a great deal in its favour which distinguishes it from the preceding amendments. My Hon'ble friend Mr. Jinnah has very emphatically pointed out that you allow the right of appeal in cases not only of a civil nature, but also of a criminal nature, and it does not seem at all to stand to reason that in a case where there is a question of life and death you should say that the judgment of the trying court must have finality about it. 12-34 A.M.

"My Lord, have we not known cases tried by some of the most eminent judges of the High Courts in which their judgments have been upset by their own colleagues or by the Privy Council? It is perfectly true that the Privy Council does not, as a matter of course, entertain appeals in criminal matters, but during the last 6 or 7 years we know that some cases have gone to the Privy Council from the Madras High Court and the Central Provinces and, I believe, one other court, and we find that the Privy Council have had some very unpleasant things to say of some of the most eminent judges of the High Courts in India.

"My Lord, it seems to me that in depriving an accused person in cases of this character of the right of appeal you are taking away a great deal from the professions with which this Bill has been introduced into this Council. I feel very strongly on this subject, and I would remind the Council that the importance of these capital sentences has been recognised by this Council itself in a preceding amendment to-day. I refer to the amendment which asked for a unanimous judgment in capital cases. Well, you may have a unanimous judgment in capital cases, and yet that unanimous judgment may be open to question.

"Well, my Lord, it seems to me that, so far as Part I of this Bill is concerned, it stands on a very different footing from the remaining Parts of the Bill. It seeks to conform itself as much as possible to judicial procedure, and unless you mean to depart from well-settled principles of criminal law in India, it seems to me that there is absolutely no reason why a person who knows that his life is at stake should not have the satisfaction of feeling that he has taken his case before an appellate court." 366

The Hon'ble Sir William Vincent:—"My Lord, the first part of this amendment deals with the question of a right of appeal from a capital sentence. Now, when the question of capital sentences first came under consideration, I accepted the view that the three judges forming the members of the tribunal should be unanimous as to the guilt of the accused before a capital sentence was pronounced, and that, I think, goes sufficiently far. Where you have three judges all satisfied as to the guilt of the accused I cannot see why any further appeal is needed. If an accused were ordinarily prosecuted for murder, who are the authorities before whom he would go? He would go before a Sessions Judge assisted by assessors, and after that before two High Court Judges

The Hon'ble Mr. M. A. Jinnah:—"May I rise to a point of order? The Hon'ble the Home Member is not quite right there. In the city of Bombay a case can go to a full bench of the High Court even from a judge of the High Court assisted by a jury."

The Hon'ble Sir William Vincent:—"The Hon'ble Member is quite right as regards Bombay city, but there are many other parts of India where the position would be as I say, and in such cases one Sessions Judge and two High Court judges would be all the judicial authorities who would examine the records. Under the system that we propose at least three High Court judges would have heard the evidence. Of course it may be said that these three judges might make mistakes. Well, so might any court; the full bench is equally likely to make mistakes; there is no certainty about this in any court. We have just been told of a certain appeal to the Privy Council against a decree of a full bench. I remember the case. It was a case of misjoinder of charges. You cannot get any finality by allowing an appeal to a full bench, but we say that by providing a strong tribunal and by further providing that in any death sentence the judge must be unanimous as to the guilt of the accused, we think we have done all that is necessary to meet the abnormal circumstances in which this Part of the Bill will be used.

"It is very late, my Lord, and there is only one other matter to which I wish to refer, and that is the statement of the Hon'ble Mr. Jinnah that all amendments put forward are neglected

The Hon'ble Mr. M. A. Jinnah:—"I said all important ones."

The Hon'ble Sir William Vincent:—"I suggest to the Hon'ble Member that that is scarcely fair after the modifications made in the Bill. I may cite one which was made just before dinner, when a very important amendment proposed by an Hon'ble Member was accepted in this Council."

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I have not heard a word from the Hon'ble the Home Member about the second part of my amendment, namely, 'when a certificate has been obtained from the Advocate General'."

The motion was put and negatived.

The motion that clause 17 stand part of the Bill was put and agreed to.

The Hon'ble Sir William Vincent:—"My Lord, I move that clause 18 as amended by the Select Committee stand part of the Bill."

The Hon'ble Mr. V. J. Patel:—"My Lord, I beg to move—

'That for clause 18 the following clause be substituted:—

'18. Depositions recorded under section 512 of the Code may, in the circumstances specified in that section, be given in evidence at the trial of an accused under this Part.'

51 is a misprint for 512. The amendment, my Lord, amounts to this, that I want to retain sub-clause (2) of clause 18 and I want the Council to drop the first sub-clause. The first sub-clause is this :—

'18. (1) Notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872, where—

(*a*) the statement of any person has been recorded by a magistrate, and such statement has been read over and explained to the person making it and has been signed by him, or

(*b*) the statement of any person has been recorded by the court, but such person has not been cross-examined,

such statement may be admitted in evidence by the court if the person making the same is dead or cannot be found or is incapable of giving evidence, and it is established to the satisfaction of the court that such death, disappearance or incapacity has been caused in the interests of the accused.'

"Now, my Lord, the position is this. You have, for the trial of certain offences, a specially constituted tribunal. This tribunal is not empowered to go into the question whether the alleged offence is connected with any revolutionary movement or not. In fact, the tribunal has to take as a matter of course the finding of the Local Government on that question. Secondly, that tribunal, even though it is not unanimous, is bound to convict the accused according to the majority finding. Thirdly, whether the finding is unanimous or by majority the accused has no right of appeal. There are no commitment proceedings, there is no jury, and on the top of all this you have provisions for special rules of evidence. It is for you to accept these provisions or not."

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, I support the amendment, and I do so for this reason, that the statement referred to in sub-clause (*b*) of the section will be a statement of a person which has been recorded by the court. That means a statement recorded in the proceedings of the case, and in my opinion that is the utmost limit to which the Council might go, in admitting a statement which has not been subjected to cross-examination. In Act XIV of 1908, the Criminal Law Amendment Act of 1908, section 13 laid down that 'the evidence of a witness taken by a magistrate in proceedings to which Part I of that Act applied, would be treated as evidence before the High Court if the witness were dead or could not be produced, and if the High Court had reason to believe that his death or absence had been caused in the interests of the accused.' The statement was, therefore, one made in the course of the proceedings of the case under trial. Sub-clause (*a*) of section 18 goes much beyond that. It would admit 'the statement of any person which has been recorded by a magistrate and such statement has been read over and explained to the person making it and has been signed by him.' I submit there is no justification for going even beyond the provision of the Act of 1908. For this reason I support the amendment."

The Hon'ble Mr. G. S. Khaparde:—"My Lord, I have a somewhat similar amendment, asking that the first clause, the whole of it, be omitted altogether, and my reason for sending in that amendment was that I have not been able to discover any authority for this provision in any published law book or Code. It is rather a difficult situation. I do not like to say it and yet I feel I must say it—as some of my practice has been to plead such cases and my experience has been that it is not really the accused but those people who are against the accused that procure the absence of witnesses. The difficulty of bringing home offences of this kind is so great that even Government feels it, as this whole legislation shows; and unfortunately the accused stands in very great danger of being run in by his enemies. So this first part, apart from its not being supported by any authority, is also open to this danger, that a witness may have said something, or made some statement, which he will not be able to prove in cross-examination, and the man is made to disappear by the enemies

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of accused. Now what evidence can be brought for that kind of thing? It will ultimately depend on the skill of the lawyers on either side. As we know, no case is bad. It all depends on who is defending it. A strong man defending a bad case may carry it, while a weaker man, not commanding eloquence, may not be able to carry a true proposition; but in that case it comes to be that bad evidence is accepted against the accused, and there is serious danger sometimes of his being hanged on the strength of it. I, therefore, propose that this first clause be altogether omitted from this section."

12-44 A.M. **The Hon'ble Sir William Vincent:**—"My Lord, the clause in question is based on paragraph 185 of the Report itself, where it is said that it is essential that the protection of important witnesses and the perpetuation of their testimony should be provided for. The Committee go on to say that they think that the evidence of dead or absent witnesses should be made available for use by the court—(1) statements made to a police officer not below the rank of Superintendent, and (2) statements made at the trial and not yet cross-examined upon. Well, we found on looking into this matter that it was impossible to include statements made to police officers, because the statements mentioned in the Report have to be signed and the Criminal Procedure Code, as Members of this Council are well aware, prohibits police officers from taking the signatures of persons examined on documents of this kind. Therefore, no statement to a police officer is included in the Bill which is now before the Council. But we think it is reasonable that statements made to magistrates by witnesses who are subsequently murdered by co-conspirators of the accused, or kept out of the way, should be admissible in evidence *quantum valeant*. We do not suggest that these statements will have the same value as the statements of witnesses who have been cross-examined. If the records of these conspiracy cases are read, or even if this Report is read, it will be seen what desperate efforts are made by these revolutionaries to attempt to get rid of any man who attempts to give assistance to the authorities or give evidence against them. I think many of us yesterday were much struck by the instances that the Hon'ble Mr. Emerson gave to this Council on this matter. One of the devices of these revolutionaries is to murder persons whose statements have been recorded before their cross-examination, in the hope that that may prevent these statements being used as evidence. Directly they know a person has made any statement, then attempts are made on his life. In fact, we have been told quite definitely that the lives of any informants to the police or magistrate are known to be forfeit.

"I have got two cases here in which persons who had given evidence to the authorities were murdered immediately after doing so; and it will interest Council to know that on an inquiry made from Bengal I find that the total number of informers or supposed informers murdered has been no less than 20. We do not, however, see why the accused person should benefit by the fact that a witness is murdered, as I say, either by the person himself or at his instigation or by co-conspirators with him. It is to remove the temptation for murdering these witnesses that this clause is enacted. I must oppose this amendment."

The Hon'ble Mr. M. A. Jinnah:—"When the Bill was introduced, my Lord, I think I referred to this point as an objectionable one, and on that occasion the Hon'ble the Law Member seemed to take it that it was the gravest objection that I had raised. I think he said that, but unfortunately I think he did not hear what I said. Undoubtedly that was one. My first objection was on principle. My second objection was that it would create a trial within a trial. That was not the only objection. On that occasion the Hon'ble the Law Member said this (I am quoting from his speech): 'I think my Hon'ble friend forgot that possibly it was an unwise thing to argue this in an assembly which contains so many lawyers.' My Lord, if he had said 'in an assembly, which contains an able Law Member' and

therefore that it was unwise on my part to argue, forgetting that there was an able Law Member, I would acknowledge that. But I do not know what the suggestion means. Does the suggestion mean, my Lord, that I forgot that I should be found out in this Council? Because I am sure that even a minor lawyer of a few years' standing, much less an able Law Member, is acquainted with section 33. Now, my Lord, we know what section 33 is, and why I emphasise this point that it will create a trial within a trial is for this reason, that more value will be attached to statements which are not subjected to the conditions laid down in section 33 than to statements and evidence which have gone through the requisite conditions laid down in section 33 Under section 33 you first of all have the evidence of a man who has given evidence in proceedings where the parties are there or their representatives. He is cross-examined, and when a man is cross-examined there would not be the same trouble to get in the evidence of a man who has already been cross-examined because he has gone through the test and therefore there would not be that temptation as there would be in a case where the man has made a statement behind the back of the other party and that statement is produced in court and tendered as evidence not subjected to the test of cross-examination, which after all is the greatest possible test of truth. If you can possibly find out whether a man is telling the truth or not, you can only do it by cross-examination and not otherwise. Under those circumstances I impress upon the Government and those who are responsible for this Bill that you will have much greater chance, more likelihood of there being a trial within a trial, and I will illustrate my point in one word. Suppose I am right to this extent, that the police themselves are very anxious to get in the statements of X, Y and Z without putting them forward to the test of cross-examination, because they are greatly afraid that if these men are cross-examined they will break down. Well, the natural thing for them to do is to say to the court 'X, Y and Z have made their statements. They have been spirited away by the accused; we cannot produce them.' 'Oh!' says the court 'It satisfied me.' We know, and I can say with a certain amount of confidence, that you can always get two or three witnesses who will come forward and tell a story which will *primâ facie* satisfy the court that, we will say, X was seen with the accused on the day previous—somebody will come and say that; also that Y was seen with the accused on the day he was leaving the station and is not to be found, and that Z was last seen in the company of a brother of the accused and cannot be found. Well, what is the accused to say to that? What answer has the accused to give? He can only say he knows nothing about it; and what will the court do? The court will say 'I have got three witnesses and these three witnesses say that X, Y, and Z were seen either in the company of the accused or a relation of the accused just a day or two before and they are not to be found any more.' I say that would be quite enough to induce the court to admit the evidence. Then I quite appreciate the point of the Hon'ble the Law Member. He says 'Of course that might make out a case for admitting the evidence, but what value is to be attached to it is a different point' I quite appreciate it; it is perfectly true. The court may not be misled by that evidence. But notwithstanding that, may I point out—and I am sure the Hon'ble the Home Member who has himself been a judge and knows better than I do because I am sure that he has dealt with more criminal cases than I have, as a Sessions Judge and as a District Judge—does it or does it not leave some impression on your mind if *ex parte* statements are admitted? Would you or would you not begin to wonder perhaps that they are true? Will they or will they not affect you? Further, may I point out to the Hon'ble the Home Member who has got the experience of having tried these cases as a judge that if these stories are concocted, they are so cleverly concocted that even a very shrewd judge may fall into the snare and take them to be true? Therefore, my Lord, I submit that. I know there is a similar provision in the Act of 1908, and probably that will be trotted out and I shall be told that there is such a provision already. My answer is that two black does not make one white; that is my answer; and the fact that you have already a similar provision in another Act, that you have already committed one blunder, does not warrant that you should commit the same blunder again. That is all that I can say."

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1-4 A.M. **The Hon'ble Sir George Lowndes :**—" My Lord, this is no time of day or night for legal dialectics. I propose to answer what my Hon'ble friend Mr. Jinnah said in a very few words. I do not suppose there is anybody in this Council who does not know as well as he does that evidence that has not been cross-examined to is not of the same weight as evidence that has been cross-examined to. The question is not as to the weight which should be attached to such evidence, but whether it should be admissible under this section. Then there was the suggestion that the police might keep a witness out of the way and then come to the three High Court judges, as my learned friend said, and would try and persuade them on the evidence of two or three false witnesses that they had been spirited away by the accused.

" Well, I have some experience of courts, and I have listened to plenty of members of my profession trying to convince one High Court judge of something of this sort. But in this case they would have to convince three High Court judges. Do they think that High Court judges are fools ? It is really an absurdity. Therefore I say that no answer of any sort has been made to the point by my Hon'ble and learned friend."

The Hon'ble Mr. V. J. Patel :—" Much has been made as regards a similar provision in the Criminal Law Amendment Act. The provision in that Act is on altogether different grounds and under different circumstances. There is a magisterial inquiry there, here there is no magisterial inquiry. It is there laid down that—

' Notwithstanding anything contained in section 33 of the Indian Evidence Act, 1872, the evidence of any witness taken by a magistrate in proceedings to which this Part applies shall be treated as evidence before the High Court if the witness is dead or cannot be produced and if the High Court has reason to believe that his death or absence has been caused in the interests of the accused.'

" Under this Bill there will be no magisterial enquiry."

The motion was put and negatived.

The Hon'ble Mr. G. S. Khaparde :—" I beg to move my amendment which runs as follows :—

'That sub-clause (1) of clause 18 be deleted.'

The motion was put and negatived.

The Hon'ble Mr. Kamini Kumar Chanda :—" My Lord, I beg to withdraw my amendment—

' That in clause 18 (1) for the word ' statement ' wherever it occurs the word ' evidence ' be substituted and after the words ' of the court ' the words ' by the sworn testimony of witnesses whom the accused will have the right of cross-examining ' be inserted.'

The amendment was by leave withdrawn.

The Hon'ble Mr. V. J. Patel :—" My Lord, I formally move my amendment—

' That in clause 18 (1) sub-clause (*a*) and the letter and brackets (*b*) be deleted.'

The Hon'ble Sir William Vincent :—" My Lord, I oppose the amendment for the reasons I have already given."

The motion was put and negatived.

The Hon'ble Mr. Kamini Kumar Chanda :—" My Lord, I beg to move that to clause 18 the following proviso be added :—

' Provided that the accused had the right and opportunity to cross-examine such person mentioned in sub-clause (1) (*a*). Provided further that the accused shall have the right of calling evidence to disprove the allegation that the death or disappearance or incapacity has been caused in the interest of the accused.' "

ERRATA SLIP.

I. On page 444 of Part VI of the Gazette of India of the 29th March, 1919, 7th line from the bottom of the page, *for* the figures "21 to 30" *read* "121 to 130."

II. On page 634 of Part VI of the Gazette of India of 29th March, 1919, after the motion by the Hon'ble Sir William Vincent that clause 19, as amended by the Select Committee, stand as part of the Bill, insert the following:—

> "His Excellency the President then called on the Hon'ble Mr. Kamini Kumar Chanda to move his amendment that to clause 19 (1), the following proviso be added:—
>
> > 'Provided nevertheless that the accused shall have the right to claim a *de novo* trial if any Judge not having been present throughout the trial finds him guilty.' "

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The Hon'ble Sir William Vincent:—"So far as this amendment deals with the question of an accused having the right to disprove allegations that the death or disappearance or incapacity of a witness had been caused in the interest of the accused I do not doubt that the accused has the right already. It is the ordinary right to produce rebutting evidence. As to the other portion of the amendment I have already explained why it is impossible to limit the application of the section to cases in which the witness has been cross-examined. The fact is that these young revolutionaries often murder witnesses before their cross-examination was recorded with the deliberate object of preventing these statements being used in evidence. If cross-examinations were a condition precedent to the admission of these statements in evidence the new clause would give us very little more in it than is contained in clause 33 of the Evidence Act. I am afraid, therefore, I must oppose the motion."

The motion was put and negatived.

The motion that clause 18 as amended by the Select Committee stand part of the Bill was put and agreed to.

The Hon'ble Sir William Vincent:—"My Lord, I move that clause 19 as amended by the Select Committee stand part of the Bill."

The Hon'ble Sir George Lowndes:—"Perhaps the Hon'ble Member will allow me to say a few words and I may be able to meet him on this amendment. I don't think he means what he says in his amendment :—

'Provided nevertheless that the accused shall have the right to claim a *de novo* trial if any judge not having been present throughout the trial finds him guilty.'

"I do not think my Hon'ble friend means that the accused can go on to the end of the trial and take his chance, and if found guilty then ask for a trial *de novo*. I think what he wants is that where there has been a change in the constitution of the court it shall be open to the accused to have an order that the witnesses be recalled. We might put it in as a substantive clause and not as a part of clause 19, which is a rule-making power. It might provide that if there is a reconstitution of the court during the trial the accused shall be entitled to demand that the witnesses or any of them shall be recalled and re-heard."

The Hon'ble Mr. Kamini Kumar Chanda:—"I accept that."

The following motion was put and agreed to :—

'That after clause 18 a substantive clause be inserted to the effect that in case of any reconstitution of the court during the trial the accused shall have the right to demand that the witnesses shall be re-summoned and re-heard.'

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I beg to move that in sub-clause (2) of clause 19 after the words 'custody of the accused,' the words 'and his release on bail' be added within the bracket.

"The intention of the amendment is quite evident, and it does not require any explanation."

The Hon'ble Sir William Vincent:—"My Lord, I am quite prepared to accept this amendment."

The motion was put and agreed to.

The motion that clause 19 as amended by the Select Committee and as further amended stand part of the Bill was put and agreed to.

1-15 A.M. **The Hon'ble Mr. Kamini Kumar Chanda :**—"My Lord, I beg to move that the following new clauses be inserted :—

'19-A. The Government shall provide for the payment of the reasonable expenses in the case of poor persons charged with murder or sedition for the payment of Counsel required for the defence of a person brought for trial before the Special Court and certified to be so required by such court.

19-B. The court shall have the power to award any amount which seems proper to it as compensation to the accused when it acquits him and finds that there was no reasonable or probable cause for prosecuting him, such compensation being payable by Government unless the court directs otherwise:

Provided that the award of compensation and receipt thereof by the accused shall be no bar to any suit for damages which the accused may have the right to institute for false and malicious prosecution but in decreeing any damages in such suit, if any, such amount paid as aforesaid shall be deducted'."

The Hon'ble Sir William Vincent :—"My Lord, I will deal with one of the new clauses which the Hon'ble Member proposes to insert, 19-A. The position is this, that Government does provide by the rules payment of legal advisers to persons charged with murder who are unable to pay for Counsel themselves and the same rule will apply in the case of trials under this Part. I do not exactly know what offence the Hon'ble Member refers to as sedition unless it is an offence under section 124-A. But I submit to the Council that any person accused of an offence under section 124-A is not entitled to any more consideration than an ordinary criminal. Nor indeed is there any section of offence of sedition pure and simple."

1-18 A.M. **The Hon'ble Mr. Kamini Kumar Chanda :**—"My Lord, the only point is that in cases of sentences for life, all reasonable expenses may be paid. That is why I want these clauses to be inserted."

The motion was put and negatived.

SGPI, Delhi,—870 L D— 2-4-19—80.

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Extract from the Proceedings of the Indian Legislative Council assembled under the provisions of the Government of India Act, 1915. (5 & 6 Geo. V, Ch. 61.)

Pro no 73

The Council met at the Council Chamber, Imperial Secretariat, Delhi, on Friday, the 14th March, 1919.

* * * * *

CRIMINAL LAW (EMERGENCY POWERS) BILL—*contd.*

His Excellency the President:—"I think, it may be for the convenience of Hon'ble Members if I state that I propose to sit until we have disposed of the amendments on the paper, and that at quarter past 1, I shall adjourn for an hour for lunch, at 5 o'clock we shall have a half hour's tea interval and at a quarter to 8, there will be an hour and a quarter for dinner. I very much regret to have to press Hon'ble Members like this, but the Session is drawing to a close rapidly, and we shall have to have another day for the passing of the Bill, when the Bill has gone through this stage and the drafting has been carefully examined, and, I think, Hon'ble Members must see that the time really forces us to sit continuously in this manner. 11-3 A.M.

"We now come to Part II."

The Hon'ble Mr. V. J. Patel:—"My Lord, I beg to move that Part II be deleted. My Lord, we considered the provisions of Part I yesterday, or rather yesterday and to-day, and I may say at the outset that some of us might think of attempting to reconcile ourselves to the provisions of that Part, however drastic they may be, but so far as the provisions of Part II and the subsequent Parts are concerned, I must confess that I for one cannot and will never be able to reconcile myself to them, and I venture to think that no Indian who loves his country will ever reconcile himself to the provisions of these Parts. My Lord, these provisions are, in the words of Dr. Sapru, in his speech at the time of the introduction of this Bill, 'wrong in principle, unsound in their conception, dangerous in operation and too sweeping and too comprehensive.' They are in my humble opinion, your Excellency, utterly subversive of the order of things hitherto recognised and acted upon in all civilised countries. They in fact substitute the rule of the executive for the rule of law and they are, to quote again my Hon'ble friend Dr. Sapru, nothing but 'undiluted coercion,' pure and simple. My Lord, I venture to think that the provisions of these Parts will strike a death-blow to all legitimate and constitutional agitation in the country, and I for one see in them the grave of all our political aspirations. They will defeat their own purpose, for the reason that they will drive all agitation into hidden channels, with the result, my Lord, that consequential evils will follow as night follows the day. I am respectfully of opinion that the Government that contends that the country cannot be governed, even in ordinary times, without the assistance of such unconstitutional laws as are proposed to be enacted in these clauses forfeits its claim to be regarded as a constitutional government. Just consider for a moment what the provisions are. But before doing so, let us examine what powers Government actually have in their armoury in the way of preventive measures. I invite the attention of the Council to sections 106 to 110 of the Criminal Procedure Code. The heading of the Chapter is 'Prevention of Offences,' the very object with which the present provisions are proposed to be enacted. Section 106 provides that, whenever a person is found guilty of any offence which involves a breach of the peace, then he can be bound over on conviction. You may say that that applies to cases in which the accused is 11-4 A.M.

already convicted, but I refer this Council to section 107, which is purely preventive in its scope. Section 107, sub-clause (1), says :—

'Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tranquillity, the Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix.'

"The period for security, as provided in the provisions now proposed to be enacted is also one year. Sub-clause (2) says :—

'Proceedings shall not be taken under this section unless either the person informed against or the place where the breach of the peace or disturbance is apprehended, is within the local limits of such Magistrate's jurisdiction, and no proceedings shall be taken before any Magistrate, other than a Chief Presidency or District Magistrate, unless both the person informed against and the place where the breach of the peace or disturbance is apprehended, are within the local limits of the Magistrate's jurisdiction.'

"And clause (3) is very important :—

'When any Magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that such breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, such Magistrate may, after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case, together with a copy of his reasons.'

"My Lord, this is not all, section 108 goes further. It says :—

'Whenever a Chief Presidency or District Magistrate, or a Presidency Magistrate or Magistrate of the first class specially empowered by the Local Government in this behalf, has information that there is within the limits of his jurisdiction any person who, within or without such limits, either orally or in writing, disseminates or attempts to disseminate, or in anywise abets the dissemination of—

(*a*) any seditious matter, that is to say any matter the publication of which is punishable under section 124-A of the Indian Penal Code, or

(*b*) any matter the publication of which is punishable under section 153-A of the Indian Penal Code, or

(*c*) any matter concerning a Judge which amounts to criminal intimidation or defamation under the Indian Penal Code,

such Magistrate may (in manner hereinafter provided) require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.'

"Now, my Lord, these powers in themselves are ample. However, there are further powers given by sections 109 and 110, which I do not propose to read to this Council and take up its time unnecessarily; but I will read only one other section, section 144, which has a great bearing on the question that we are considering. It says :—

'In cases where, in the opinion of a District Magistrate, a Chief Presidency Magistrate, a Sub-divisional Magistrate, or of any other Magistrate specially empowered by the Local Government or the Chief Presidency Magistrate or the District Magistrate to act under this section, immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in manner provided by section 134, direct any person to abstain from a certain act (mark the words) or to take certain order with certain property in his possession or under his management, if such Magistrate considers such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk, of obstruction, annoyance or injury, to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray.'

"My Lord, I do not understand what more powers you want for the prevention of offences. The fact is that even the semblance of a trial before a Magistrate in cases under the prevention Chapter is proposed to be taken away and the executive is to be made the sole authority to decide whether a person's liberty shall be taken away.

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"Let us now, my Lord, turn to the provisions of this Bill. Under section 20 the Governor General in Council is empowered to say that in respect of what offences the magisterial inquiry shall be entirely dispensed with *i.e.*, there shall be no inquiry whatever before a Magistrate or before any judicial authority. Once the Executive Government makes up its mind that a certain area should be proclaimed it shall be proclaimed, and in that area the Provincial executive shall be entitled to call upon any person '(1) to execute a bond with or without sureties for such period not exceeding one year as may be specified in the order, that he will not commit, or attempt or conspire to commit, or abet the commitment of any offence against any provision of the law which is referred to in the Schedule; without any trial, without any inquiry, (2) to notify his residence and any change of residence to such authority as may be specified; (3) to remain or reside in any area in British India specified; provided that, if the area so specified is outside the province, the concurrence of the Local Government of that area to the making of the order is first obtained; (4) to abstain from any act specified which, in the opinion of the Local Government, is calculated to disturb the public peace or is prejudicial to the public safety; and (5) to report himself to the officer in charge of the police-station nearest to his residence at such periods as may be specified.' Any or all of these orders may be passed all at once if the Local Government so chooses. And we are told that there are safeguards. Well, I am respectfully of opinion, your Excellency, that these safeguards are merely, if it is not unparliamentary to use the expression, 'farcical;' they are merely illusory; they mean nothing. I wish they had not provided these safeguards at all; there is no meaning in them. It is said the Local Government is to pass an *interim* order which may remain in force for one month or more if the Local Government so determines. The case will then be sent to the investigating authority for investigation. Now, who is to appoint this investigating authority? The authority passing the *interim* order will also appoint the investigating authority. And how is that investigating authority to conduct its inquiry? Inquiry is not the proper word for that. There is no inquiry. Call it investigation if you like. Inquiry is certainly an inappropriate and, I should say, wrong use of the word. The word inquiry, according to the Code of Criminal Procedure, applies to proceedings before a Magistrate, not by any other authority; and yet the word used is the word inquiry. However, the authority that will pass the *interim* order will appoint the investigating authority. Then again, that authority will hold its investigation—I will use the word investigation—*in camera*. For that purpose I will refer you to section 25, sub-clause (2), which says 'The investigating authority shall then hold an inquiry *in camera*.'

"It is not left to its discretion to decide whether it should hold an open inquiry, whether in part or in whole, but that it should hold the whole inquiry *in camera* for the purpose of ascertaining what in its opinion, having regard to the facts and circumstances adduced by the Government, appears against the person in respect of whom the order has been made. Then, will the person concerned be entitled to appear? No, the person concerned shall not as of right be entitled to appear and present his view of the case before the so-called investigating authority. My Lord, this means if the investigating authority so decides, the man may be condemned unheard—a principle unparalleled in the legislative history of any civilised country. However, if the investigating authority chooses to do so, the accused may be allowed a reasonable opportunity to appear before it—not at all its stages, but at some stage that the authority may deem proper. The section says:—

'Such authority shall in every case allow the person in question a reasonable opportunity of appearing before it at some stage in its proceedings and shall, if he so appears, explain to him the nature of the charge made against him and shall hear any explanation he may have to offer.'

"This further shows that the investigating authority is not bound to record the statements of witnesses on behalf of the prosecution or on behalf of the accused; and I go further and say that the investigating authority, under the proposals that we are now considering, has no power to summon and compel the attendance of witnesses for either party. If the Local Government chooses to produce some witnesses and asks—or I should say directs—the investigating authority to examine certain witnesses, the investigating

authority may do so; but it has got no power to summon and compel the attendance of any witnesses. Apart from this, my Lord, the investigating authority is not bound to examine the witnesses produced by the person concerned. The investigating authority is not bound to record the statements which they make. The person concerned says 'I don't want summonses; I produce these witnesses; pray examine them;' but the investigating authority in its wisdom will say 'No, we are not going to examine these witnesses.' After hearing the explanation, if the person in question is called upon at all to do so, and after making such further investigation, if any, as appears to such authority to be relevant and reasonable —relevant not in the sense of the Evidence Act, but what he considers to be relevant—the authority shall record its conclusions. He may imagine a rule for himself and consider whether, in his opinion, certain statements, or certain inquiries are relevant or not, and decide whether he should make those inquiries or summon those witnesses. Then there is this proviso:

'Provided that the investigating authority shall not disclose to the person whose case is before it any fact the communication of which might endanger the public safety or the safety of the individual.'

"My Lord, I can quite understand—no, I cannot understand—it may be that you might leave the question of disclosing or not disclosing any facts to the person concerned to the discretion of the investigating authority; but to say 'it shall not disclose to the person whose case is before it any fact the communication of which is, etc, etc.,' however material such fact may be for the purposes of the defence of the person concerned, of the person whose liberty is at stake, to say, my Lord, that 'the investigating authority shall not disclose' is to leave no discretion to the investigating authority.

"The second proviso says:—

'Provided further that nothing in this sub-section shall be deemed to entitle the person in question to appear or to be represented before the investigating authority by pleader, nor shall the Local Government be so entitled.'

"Well, my Lord, I have already pointed out that it is for the investigating authority to consider whether the person concerned should be given an opportunity at any stage to appear before it or not. But who is to give that opportunity? And this provision says: 'Well, you appear in person. Do not embarrass our investigating authority by the presence of your pleader, we shall not have anything to do with the pleader, you appear and we shall ask you certain questions and take down what you say, but no pleader.' My Lord, and what next? The investigating authority, after making the inquiry in the manner I have described, is to record a finding. Is the investigating authority to record a distinct finding that the person concerned is connected with any anarchical or revolutionary movement as alleged by the Local Government? No, it is left entirely to the discretion of the investigating authority to record what finding it pleases to record. And after that finding is recorded, it is sent on to the provincial executive. And here we find, your Excellency, what the real significance of these provisions is. After the Local Government receives the so-called finding of the investigating authority, it looks into it, and if perchance that finding happens to be favourable to the person concerned, the provincial executive is entitled to say 'We shall have nothing to do with it; we never appointed you for this purpose; we do not agree with you and we shall not accept your finding;' and then the provincial executive makes the *interim* order final.

"The provincial executive is not bound to pay any attention to the findings of the investigating authority, not at all bound to follow that finding. Then I pray why do you insert these provisions at all? Why make a show of an investigation in these cases? If the Local Government is pleased to believe that a person is concerned in any movement referred to in section 20 take the power you want and be done with it. You provide safeguards and those safeguards mean nothing. It looks as if these safeguards are provided to delude people; there is no meaning in these safeguards. You are not bound in any way to carry out the recommendations of the investigating authority.

"These, then, shortly, my Lord, are the provisions of this Chapter, and as I have observed in the beginning, speaking for myself I shall, with any modifications, never be able to reconcile myself to the provisions of this Part and the Part that follows, and I respectfully venture to submit that no Indian will ever do it."

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, the Council will see that there is an identical motion in my name, and I think it is convenient that I should speak at this stage. My Lord, my work has been lightened very much by the exhaustive and eloquent speech of my Hon'ble friend Mr. Patel. All that I need do is to associate myself with his arguments and just to add a word or two. My Lord, as regards Part I, which we disposed of last night or early this morning, as my Hon'ble friend has said, we can in some manner reconcile ourselves to it. We find there is some precedent for it. As a humble fry in the profession I have been accustomed to look for precedents for everything extraordinary, everything novel, and here I find some precedent because some of the provisions of that Part are based upon the Irish Crimes Act. Nobody will say or claim that India is Ireland, and I sincerely hope and trust that it will not become another Ireland in spite of this measure which you are going to pass; but there is some precedent for that Part. There is also precedent in an earlier Act of this Council, namely, the Criminal Law Amendment Act, 1908, and therefore we are in a manner reconciled to that; and speaking for myself I can refer to the fact that, although I sent in notice of a very large number of amendments on this Bill, I did not propose that that Part should be deleted. But now coming to this Part which is now under discussion, what do you find? What about this Part, my Lord? Is there any sort of precedent anywhere in this big world? I earnestly invite the Hon'ble the Home Member and the Hon'ble the Law Member to tell this Council if there is such a precedent to be found anywhere in the civilised world. But, my Lord, I think I might give to this Council the benefit of my own researches in this domain, and I have made a discovery and come across a law upon which this Part can be based to some extent. I found, my Lord, I learned that there was a law in the Scottish border town of Jedburgh where they had execution before trial. Surely you can see that this Part has some resemblance to that. Here the executive Government first punishes a man; you pass an order interning him, confining him to any place, compelling him to dance attendance at the police-station; you pass an order directing him to abstain from any act which, in the opinion of the Local Government, is calculated to disturb the public peace or is prejudicial to the public safety—dangerously wide and vague terms; but these orders may be passed and not only that, but you direct that order to be carried out by all means, you do not even say by all lawful means; and we know, my Lord, there have been complaints of torture committed upon persons who were detained; those complaints, those stories may for aught we know to be false; but in the face of those complaints one would have expected that this Part ought to be a little better, ought to have said at any rate 'Use lawful means'. However, having passed an order of punishment, having had the execution as it were, you now give him a chance of some sort of inquiry, a Star Chamber inquiry. My Lord, every artist tries to improve upon his model and here we find the same thing. In Jedburgh they had a trial at least after the execution. Here you do not even find a trial. Although you say it is an inquiry, as my Hon'ble friend has just now told us, it is not an inquiry even. If it is anything at all it is a police investigation. Now, my Lord, what are the main features of this Part? My Hon'ble friend has dilated upon them and I need not repeat them again. You do not allow the accused to be present throughout and let the accuser confront him; you do not tell him what the evidence is against him; you do not even allow a lawyer to defend him; you do not allow him to call evidence which he wishes to call, and such as it is what is the result of this inquiry or the investigation? I prefer to call it what my Hon'ble friend called it, investigation. Well, when that authority comes to a sort of finding and reports it to you, it is not binding upon you. And this is the sort of inquiry you give to the man after having punished him. My Lord, these are the provisions of this Part in brief, and it is impossible that any one with a grain of self-respect in him, any one having the country's welfare at heart, can

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possibly give any sort of support to this. I join my Hon'ble friend in moving that this Part be deleted."

11-37 A.M. **The Hon'ble Rao Bahadur B. N. Sarma:**—"My Lord, I have given notice of a similar amendment, and it would be convenient that I should have my say on the subject so that the Hon'ble the Home Member may know what some of us feel and think on the subject before he gives his ultimatum to the Council. My Lord, I have given notice for the deletion of only Part II of this Bill, because I feel that this is the most objectionable part of the Bill, the defensible part of the Bill, the most anti-British part of the Bill that one can most inconceive of. I can understand that there might be materials for action on the part of the Government of India under Parts I and III. Under Part I the Government of India will be invited to specify the offences connected or supposed to be connected with revolutionary or anarchical crime of which a person is accused. So would in a minor degree be the state of things under Part III. But, my Lord, under Part II there is no such criterion, there is no such basis to go upon. It is but the bare opinion of the Government of India that there are revolutionary movements at work, and we do not know exactly what may be passing in the mind of the Local Government or the Government of India for the time being as to what is revolutionary. I say there will be nothing for the Government of India to go upon except its bare opinion that the stage has been reached when there might be offences following. I ask, my Lord, in all humility, has not the Government powers at present to deal with cases of seditious persons who may be disposed to disturb the public peace, to promote revolutionary movements? Is not the definition of 'sedition' in section 124-A., sufficiently elastic for the purpose? Have you not got a press law which puts the press at the mercy of the executive, no doubt under the protection, it may be an illusory protection, of the judiciary, but still at the mercy of the executive?

"What you want here is that you should not be subjected to the scrutiny of the judicial authority at any time whatsoever, you want to be free from all control; is not that the Eastern spirit as it is conceived to be by Westerners *in excelsis*? Are we the educated Indians who have imbibed the true British spirit, that have imbibed the true British traditions, are we not really trying to save the Government from the crisis, from the yawning gulf into which they are falling? You wish to take power now to prevent any scrutiny of the exercise of your authority by an independent judicial tribunal. Wherein, my Lord, does this differ from the true Eastern Government, as it is conceived to be in the imagination of the Westerners? You imagine that an Eastern potentate would have a man shot straight away should he be suspected of being guilty of being connected with the movements such as are referred to in this Part, would have him trampled under the feet of an elephant in order to strike terror into the hearts of the people, but your methods are more insidious, more dangerous and they are proposed to be sanctioned by a law passed by a British Legislature and in co-operation with the representatives of the people. What do these clauses give you? The power to ask a man to give any security whatever; you are not limited, you are not controlled in your discretion as to the grant of the security that may be demanded I know of a poor man from whom was demanded a security to the extent of a lakh of rupees, making it practically impossible for him to give that security; you may be rendering the protection nugatory by reason of the excess of the security that may be demanded; you arrange that a man should be confined in any area that you please, is that not worse than any open cruelty by an Oriental Monarch? Take the case of a school-master who is in receipt of a fairly decent salary but is not able to save anything. He has got a large family; you think that the man is guilty of some connection with a revolutionary movement, and you ask him to reside outside the province, or it may be inside the province in a far off malarial tract, it may be a plague stricken jungle, don't you deprive him of his means of livelihood? Regulation III of 1818 provides at least that a man's livelihood should be secured to him, but this is denied here. How is the man to eke out his livelihood, don't you drive him into wild despair, into the commission of the very crimes that you desire to put down. How is the accused to eke out his livelihood, but you say 'oh my good fellow you are exaggerating, can you conceive of a liberal British Government ever being guilty of excesses' an

Eastern Monarch would not have done otherwise than to wreak his vengeance on one who had thwarted him. I would ask wherein differs this frankly Eastern despotism from the law as it is going to be under Part II; then you may say the Government of India has power to consider dispassionately the recommendations of the Local Governments and control them. Is that always so? May it not be said that the demands of provincial autonomy would prevent the Government of India from interfering with the discretion of the Provincial Government. May it not be said that there is danger of a Governor who conceives his duties to lie in the rigorous enforcement of his powers, threatening to resign his office if he is not supported by the Government of India; may not the Governor be oppressed by the idea that the services have set their hearts upon a particular measure; when you come to analyse the true factors you reach the bedrock of Indian rule. The idea as to what constitutes proper government and public safety as they may be conceived by the British services may be honest, we have nothing to do with the question of honesty here, but may be opposed to what lofty vision, far sighted wisdom or true British spirit would recommend. You find in New India a daughter nation, it is in the fitness of things that it should be so, there is more of true British spirit than perhaps among some of those who though British nevertheless are of opinion that the British spirit does not pay with an Eastern people. Well, here the Government are asked to do one of several things which I have described. What does it mean? A district officer believes that a man is dangerous, the Government finds it impossible to decline to act upon such a strong report as is sent up by the district officer against a man. The officer may say 'I cannot carry on the administration of my district unless a particular person here is muzzled;' the Government asks for an explanation, the explanation will be forthcoming, reports from subordinates will be forthcoming and an order is passed. Is not the prestige of the whole Government being placed in favour of a presumption of the correctness of an *ex-parte* order. I can conceive of an *ex-parte* order being passed under Part III or under Part I, but I cannot conceive of *interim* orders being passed always or under Part II. Then again the members of this tribunal may be suspected that they look forward to the favour and pleasure of the Government. Are we not really depriving a man of the only means he has at present to prove his innocence by the enactment of this Part. I shall not expatiate further on the evils. I think, my Lord we, as conscientious advisers and true and loyal subjects of His Majesty, must risk any displeasure, must risk any misconception of our loyalty, must advise, your Excellency and your Excellency's Government what we feel to be the wisest and safest course. Pray do not enslave us. You are making us slaves by the enactment of this measure without knowing it perhaps, you are doing so. We know that we are living under a despotism. The will of the people is not associated with the Government so as to command it. Let us not talk now of a Reform Bill which may or may not be enacted into law; we do not know what is in the embryo of the future. Let us take the present as it is. We have but the shadow of a judicial protection in some cases, in others the protection of the judiciary under the partial control of an executive Government for the reform of which we have been agitating for the last so many years. Pray, do not remove that one protection which prevents our being reminded continuously, harassingly, of the condition into which we have fallen. Pray, My Lord, rescue us from a law which places us at the sweet mercy of a police officer, of a Magistrate, he may be honest or dishonest, he may be honest but foolish, ignorant of the true conditions of the world, unequal to his task and therefore, in the zealous discharge and performance of his task, may land the people and the Government alike in danger."

The Hon'ble Sir Verney Lovett:—"My Lord, I suppose it is a hopeless endeavour, but I should like to make a last attempt to induce my non-official friends to see the broad facts of this matter as they really are and not as they seem in the strange light in which they present themselves to the point of view which we have heard so frequently reiterated in the debates of this and last month. The same point of view, with considerable extravagances, is constantly put forward in the press. I have seen reports of speeches and articles in newspapers the object of which plainly is to persuade people that Government in 11-53 A.M.

introducing this Bill is trying to erect a monstrous engine of tyranny and oppression. Only the other day I read an article accusing Government of being blinded by *zid* enmity and of doing the Empire unmitigated harm, by driving people mad 'without rhyme or reason.' Again I saw that a speaker had compared the action of Government to the action of Nadir Shah, the man who sacked this famous city. The speaker implied that Nadir Shah was at any rate an honest tyrant, but the Government is not even honest in its tyranny

The Hon'ble Rao Bahadur B. N. Sarma:—"My Lord, I have never by implication or otherwise tried to impute any dishonesty to the Government here or anywhere, and if I have used such expressions I beg that I may not

His Excellency the President:—"Sir Verney Lovett has not imputed anything to the Hon'ble Member. He is merely quoing statements which he has seen made. No imputation has been made against the Hon'ble Member."

The Hon'ble Sir Verney Lovett:—"Your Lordship is quite right in your explanation. I was not referring to the Hon'ble Member. If he asks me afterwards I can tell him to whom I was referring.

"Our friends here are not so hard on Government, but they have managed to persuade themselves that Government really is very hard on them and on the country. Yet the truth is that Government is not only not hard on them, but is simply performing its plain and obvious duty to Society. It cannot possibly do otherwise without forfeiting all claim to public respect and confidence.

"The facts stated in the Rowlatt Report are now universally admitted except by a few ingenious persons like my friend Mr. Khaparde. It is further admitted by so vigorous an opponent of this Bill as my friend Mr. Jinnah that—I will use his own words 'it is commonsense that by these powers' by the powers which Government now proposes to take, 'you can more effectively deal with conspiracies'. But, says Mr. Jinnah and say other members: "If you take these powers you will take them against our will, for, as Mr. Jinnah put it, you will be restraining personal liberty, you will be interning men without open trial, and thus you will deprive us of what you yourself have fought for in England from the time of King John.' This is the real main argument which prompts the opposition to this Bill, and I would like to answer it. The idea is that the British Government is doing in India or is trying to do in India what it would not do or try to do in Great Britain. Let us summarise the facts. Certain clever conspirators discovered that in a portion of this vast Continent of India, with its 315 millions of people sprung from various racial stocks, speaking many languages, professing various religious creeds, living in numberless towns and villages, and for the most part extremely credulous and simple, they discovered, I say, that in a particular province of India, where communications are extraordinarily difficult and educated young men are often poor, badly taught and impressionable, it was possible to organise revolutionary associations over wide areas. These associations at first conducted their operations with caution and trepidation. As the Rowlatt Report puts it—'at first the persons undertaking to commit outrages showed a lack of resolution,' but as they discovered gradually how extremely easy it was to outwit a sparse and ill-armed police working in a great big capital city and its suburbs, or in the towns and villages of a vast water-country mainly devoid of roads and proper communications; as too they obtained modern fire-arms and learnt how to manufacture bombs under the cover of a big political agitation, they contrived a remarkably elaborate and complete series of criminal organisations. They also established an extraordinary terrorism over the minds both of the lower classes and of many sane members of their own class. To give an instance of what I mean, let me read a passage from a speech by Lord Carmichael, dated the 11th of December 1916:

'Only a few days ago I spoke to one of you, one who has influence, one who has eloquence, and who knows how to use both, and who, I believe, hates the crimes as much as I do; he told

me that if he were to go as he would like to go to certain places in Bengal, and were to denounce the crimes publicly as he would like to denounce them, he would do it at the risk of his life; and I told him that this is not a risk which he ought lightly to undertake, and is certainly not a risk which I ought to ask him to undertake.'

"There is no doubt about all this. Anyone who knows Bengal could, if he chose, confirm my statement. What have Mr. Justice Beachcroft and Sir N. G. Chandarvarkar said quite recently in a document which can be bought for three annas in booksellers' shops in Calcutta? They wrote this:—'The records before us conclusively prove that the revolutionary organisations are secret conspiracies which have spread into different parts of the province, entered homes, schools and colleges, and have reduced their secrecy of operations almost to scientific methods. They have pledged their members to the closest secrecy of their movements on pain of instant death by murder in the event of disclosure; that is one of their rules, and every attempt has been made to give effect to it. Before the Defence of India Act was brought into force, the fair trial of a person accused of revolutionary crime had been rendered practically impossible by the murders of approvers, witnesses, police officers and law-abiding citizens suspected by revolutionaries of having given information to, or otherwise assisted, the police in the detection of revolutionary crime.' A situation of terrorism was created, the current of truth and justice was disturbed, so as to prevent a fair, open and impartial trial in the ordinary criminal courts, with the result that approvers and witnesses would not come forward to give evidence openly lest they should be assassinated.' Not only were the revolutionary conspirators so successful in the province of Bengal, but they succeeded in extending their operations or their influence to other provinces and in causing considerable trouble there. In February 1915, in conjunction with the Sikh *Ghadr* conspirators, they nearly brought about widespread bloodshed and tragedy; and was there ever a more cruel, brutal murder than the murder of the Mahant and the boy in Bihar described in the Rowlatt Committee's Chapter VIII? Now, I need hardly remind Mr. Jinnah that Great Britain is a small country endowed with excellent communications and inhabited by a homogeneous community which differs widely from the great masses who dwell together in the enormous Continent of India. It would be impossible for any gangs of conspirators to organise and keep going in Great Britain an elusive, potent and enduring system of robbery, murder and terrorism, of the sort which has been so successful in Bengal and has attempted operations in other provinces. But we may be quite certain that if anything of the kind were attempted in Great Britain, and achieved even a small measure of success, if witnesses were extensively terrorised, if evidence was therefore unobtainable, and if policemen were constantly shot, if the ordinary law were for reasons of this kind inefficacious, my countrymen would most certainly devise remedies as drastic, and probably much more drastic, than that contained in the Bill now before this Council. As it is, different as are conditions in India and England, successive Secretaries of State and successive Governments of India, have always been most reluctant to undertake in India legislation of the preventive kind now proposed. Let me refer the Council to paragraph 176 of the Rowatt Report. It deserves careful reading. As a matter of fact the whole history of the attempts of the Secretary of State, of the Government of Bengal and of the Government of India to deal with and stop anarchical and revolutionary crimes is a history of extreme reluctance to deprive any man of his liberty in any measure except after an ordinary trial in an ordinary court of law. It was only when they were forced by a developing and extending criminal propaganda and organisation from position to position, when things got worse and worse, when 'the forces of law and order working through the ordinary channels' were beaten, that early in 1914, they contemplated a substantial number of internments. Even then they did not act till the war broke out, and by adducing other considerations and greatly encouraging the revolutionary crimes compelled prompt and effective remedy. What were the effects of that remedy? They are apparent from the Rowlatt Report, are admitted by some gentlemen now in opposition and were described by Lord Carmichael in a farewell speech. What he said was this:—

'The Defence of India Act is what has helped us. I am only saying what I believe to be absolutely true when I say that the Defence of India Act has helped to defend the young

educated men of Bengal as nothing else has defended them—not their own fathers—not their teachers, for they were ignorant, not their associates, nor they themselves, for they were blind to the danger'.

"So it comes to this, that faced for years by a bloodthirsty criminal organisation which flourished on the perversion of the young and on the timidity of older persons, the Secretary of State and the Government of India, at last under the added stress of the War, discovered an effective remedy.

"In order to secure the country against any revival of the disease they wished to place a measure permanently on the Statute-book which would warn intending conspirators of what renewed revolutionary conspiracies would have to meet. In deference to the view of Hon'ble Members that such a measure would attach a serious strain to the fair name of India, they consented to make it operative for three years only. Still the measure is objected to, and they are asked either to postpone legislation, to abandon it, or if it cannot be abandoned, to make it entirely ineffectual. I have not been able to gather from any of my non-official friends how such action would be consonant with the indefeasible obligation which lies on Government to protect the lives and property of its servants and subjects, and to safeguard the future from a rekindling of revolutionary embers which, as Mr. Banerjea himself has admitted, have not expired".

12-9 P. M. **The Hon'ble Mr. P. J. Fagan**:—"My Lord, the amendment moved by the Hon'ble Member, taken in combination with the amendments which were disposed of yesterday and other amendments which are yet to come dealing with parts of the Bill as units, all appear to be part of an attempt to secure the extinction of this measure by a process of gradual and progressive amputation. As such, the amendment seems to me to aim at the very heart of the Bill before the Council. In the very few observations which I propose to inflict on the Council, I will confine myself as strictly as possible to Part II of the Bill. The criticisms of the Hon'ble Member regarding that Part appear to me to be very largely beside the point. They appear to be based on the assumption that Part II is an attempt to set up a judicial authority of a more or less normal kind. It is hardly necessary for me to point out that that is not their object. Part II of the Bill, as I understand it, seeks to set up certain executive and preventive machinery to be used and used only under very special and, as we may hope, very rare circumstances. The Hon'ble Member in the course of his rather lengthy argument has vouchsafed scarcely a word of reference to the fact that the whole Bill, including Part II, is to come into active operation only under conditions of grave peril to public law and order with which, in the opinion of the Supreme Government, the ordinary judicial procedure is incapable of dealing effectively. A casual listener might have inferred from the arguments of the Hon'ble Member, and his supporters, that this portion of the Bill, and in fact the whole Bill, is to be in practical operation in every part of India at all times, and not under the very special and rare circumstances to which I have referred. That, my Lord, is a matter which I hope to have an opportunity of referring to at greater length when the time comes for making some general observations on the Bill. I do not propose to follow the Hon'ble Member in his analysis of the provisions of Part II, but I will content myself with this remark that the machinery set up by it is as mild and as protective of the interests of the person who is involved in its operation, as is possible under the special circumstances which, from start to finish, constitute the view point not only of Part II but of the whole measure."

12-14 P.M. **The Hon'ble Sir James DuBoulay**:—"My Lord, this Bill is divided into two main divisions embodying two great principles. The one is punitive and the other is preventive, and it seems to me that when we had our debate on the question of referring the Bill to the Select Committee, this Council decided those principles; and I confess I was somewhat puzzled to know what line the Hon'ble Mr. Patel and the other Members who had proposed this motion would take in supporting their amendments. As a matter of fact, the Hon'ble Member in charge of this Bill told the Council that he regarded the preventive measures as almost the more important of the two, and he reminded us that the Rowlatt Committee themselves did not expect very much from the

punitive measures without the adoption of preventive measures in addition. The mainspring of the opposition to this Part of the Bill lies in that principle which has been so often referred to, namely, that no man's liberty should be taken away without a judicial trial in accordance with the ordinary rules of procedure and evidence, and that, my Lord, is the common ground between those who oppose this measure and those who support it. It is recognised on all hands that it is objectionable that these canons should not be observed whenever a man's liberty is interfered with. But there are people who carry this objection to an extreme point. 'Perish law and order, but let not one innocent man be touched'; and that is where we differ from them. While there are those who carry the principle beyond the bounds of reason, I feel that there are many Members in this Council who do not go so far. I think the Hon'ble Mr. Jinnah recognised that there might be a time when he would stand side by side with Government with the utmost reluctance it might be, and I feel it is just a question of this. Is our case strong enough? I say it could not be stronger. We have heard the case explained to us by the Hon'ble Sir Verney Lovett and the only way in which I could conceive that anybody could maintain that it would be stronger would be if they should be in a position to say 'You have got these crimes rampant now, and therefore it is essential to take drastic action.' But I maintain, my Lord, that this is not a sound position. It is the very fact that the measures which we have taken have been so successful, which justifies us in asking this Council to give us a continuance of those powers.

"I do not propose to follow the Hon'ble Mr. Patel into the various details of the Part to which he has referred, because I think every one of the points which he has taken will be dealt with in the amendments that are to come before us.

"I would only say to the Hon'ble Mr. Sarma, as regards his remarks that we have got section 124-A. and so on, that the whole of our case lies in the fact that terrorism has made our ordinary judicial procedure impossible for dealing with this class of crime. Again, as to the Hon'ble Mr. Patel's remark that we could use the provisions of Chapter VIII of the Criminal Procedure Code, I would first of all point out that there is an amendment on the Agenda paper on which we shall discuss that very proposal or very much the same proposal, and that the same argument that I have already used applies here too, inasmuch as in the case of the Criminal Procedure Code you are bound by the ordinary laws of evidence and all those rules of procedure which, as I have explained, cannot be adopted in cases of this class.

"There is only one other point, my Lord, that I wish to refer to. The Hon'ble Mr. Sarma has thrown it in our teeth that we contemplate to use the provisions contained in Part II before they are necessary and under conditions when they are not necessary. I would only say that the conditions laid down for bringing Part II into operation are the result of the recommendation, which I think must carry conviction to a great many minds, of the Rowlatt Committee. We venture to lay some stress on the desirability from every point of view of the Government being able to take mild measures early. The Rowlatt Committee emphasize the importance of this. Government have endeavoured to follow their recommendation; they have endeavoured to provide some minor forms of restriction in this Part for a less dangerous state of affairs, and they have endeavoured to introduce reasonable safeguards. The question whether those forms of restriction are in their detail proper is a matter which will be dealt with when the various amendments concerning them come under discussion and I do not think, I need say any more now, my Lord, than that Government must oppose the amendment now before us."

The Hon'ble Mr. M. A. Jinnah:—"My Lord, this Part of the Bill is, as I said on the very first occasion, to me abhorrent and shocking, and on that occasion, my Lord, I stated my reasons for it. I would not really have spoken in the Council on this motion of the Hon'ble Mr. Patel's more than by merely saying that I am strongly opposed to this Part of the Bill, and I would have done that, my Lord, for this reason, that I really feel that I cannot even trust myself to discuss this Part lest I may give vent to my 12-20 P.M.

feelings and my opinion, which I honestly say to this Council I cannot possibly express in words, namely, my repugnance for this Part of the Bill. But it is the first time that the Government side have tried to meet the real point in this debate, and that point having been made, I venture to make a few observations.

"The Hon'ble Sir Verney Lovett quoted me, but only portions of my reasons for opposing this Part II. Therefore, as he has quoted me, he does not quite correctly represent my position or the grounds of my position. But I will meet his point. And the point which he endeavoured to make was that there is real danger, and that being so, are we, as a Government, not entitled to enact this measure into law? Now, my Lord, that is the sole question which the Council has got to decide. If I may quote an authority—and I am quoting Blackstone who has been quoted by Lord Shaw (I am not quoting this as a judgment, but merely as a quotation from Blackstone and for convenience sake I am quoting it from his judgments). This is what he says:

'Blackstone is quite clear upon the practice of the Constitution. He searchingly treats the case both of liberty and life as tests both and equally of one and the same principle—the very principle which is under scrutiny in the present case. To bereave a man of life or by violence to confiscate his estate without accusation or trial would be so gross and notorious an act of despotism as must at once convey the alarm of tyranny throughout the whole kingdom; but confinement of the person, by secretly hurrying him to jail where his sufferings are unknown or forgotten, is a less public and less striking and therefore a more dangerous engine of arbitrary government.'

"And this is, my Lord, the point.

'And yet sometimes when the State is in real danger, even this may be a necessary measure.'

"Therefore, my Lord, to stop here for a moment, this measure is justified by the Government on the ground that the State is in real danger. Now I shall proceed:

'But the happiness of our constitution is that it is not left to the executive power to determine when the danger of a State is so great as to render this measure expedient.'

"My Lord, I repeat this—What is happening here? Who is determining that danger to the State here to-day? I emphatically say, the Executive Government. The Hon'ble Sir Verney Lovett said 'If a danger was made out in my own country, my own countrymen would have no hesitation in passing a measure of this kind.' My Lord, I venture to say that we have the case of Ireland in front of us, and I am sure the Hon'ble Sir Verney Lovett knows more about Ireland than I do. Have you taken any steps of this kind in Ireland? Are there not revolutionary movements? Is Ireland not in danger? Did you not find that in the midst of this war, when the Empire was in the throes of danger and death, Ireland was conspiring with your enemies and rebelled? What has happened in India? In India it is acknowledged that a large body of men are absolutely loyal. Because a few hundred men or a few thousand men have gone astray, and there again, my Lord, I make bold to say in this Council that wrong as their actions are, I again repeat what I said, that it is also due to your policy; and because from this position you ask us to enact measures of this kind which are opposed to the teachings of history, which are opposed to the fundamental principles of the constitution, which are opposed to the fundamental principles of justice; and says the Hon'ble Sir Verney Lovett that I admitted that it is commonsense, that if I give these powers to Government, the Government will secure a larger number of guilty persons. Of course, if you spread your nets with these arbitrary engines you will certainly get a larger number of the guilty; but how many will you also take into that net of yours who are innocent; and why should the Legislature give you such powers unless the State was in real danger, and what is the danger that you have made out? That is the sole question. I shall proceed with my quotation, my Lord:—

'The authority is Parliament only or legislative power that whenever it sees proper can authorise the Crown, by suspending the Habeas Corpus Act for a short and limited time, to imprison suspected persons without giving any reasons for so doing.'

"Therefore, my Lord, if these powers are given to you, you will be imprisoning suspected persons, not necessarily guilty persons, and if you are going to

suspect 500 people, I daresay in that 500 lot you may have some really guilty ones. But what about the innocent? The Hon'ble Sir Verney Lovett, my Lord, on the last occasion gave us a harrowing account of those whose properties were robbed and those whose lives were taken away by some of these revolutionaries, and he said 'what about them?'

"My Lord, I am equally anxious to protect them. I entirely agree with him that they are entitled to the protection of Government; but they at any rate were there face to face with the person who assaulted them; they at any rate had the chance of giving it back. But what about the innocents that will get into your net? What chance have they except to rot in jail without a remedy? My Lord, therefore, I quite agree, I quite admit that; and I again say this to Sir James DuBoulay, who spoke on behalf of Government. I assure you that if I was convinced that the British rule was in danger, if I was convinced that there was a real danger to India, I shall have no hesitation, as I said, although in my own heart I shall be loath to give my sanction to a measure of this character, yet I shall do it. But I am not satisfied, my Lord, I am not satisfied that you have made out a case to ask us to place these powers in your hands. What will this be, my Lord? We know that even the Star Chambers were condemned. They at least had the semblance of a judicial trial. Why were they condemned? They were condemned because, in the words of a great constitutional authority, Maitland, 'it was a court of politicians enforcing a policy, not a court of judges administering the law.' That is what you will constitute yourself, a court of politicians, and what is worse, even without the semblance of a trial as there was in the Star Chamber.

"My Lord, I do not wish to detain this Council any longer. I do not wish to repeat what I have said, but I really cannot understand, especially in view of the facts which were stated to this Council by the Hon'ble the Home Member, who said that these revolutionary movements—I am not quoting his exact words, but I believe I am correctly representing it—he said that these revolutionary movements were brought under hand to a very large extent; it is said that the Defence of India Act has done a great deal of good; it is also well known that large numbers of detenues have been released, that things are much better than they were. But Government say 'Oh they might at any time get worse; therefore please pass these laws.' I say, my Lord, that is again opposed to the very fundamental principle. Government say it might get worse. I say these powers can only be granted if Government really feel that there is imminent and real danger. Then you come to the Legislature and I am sure, as I said before, you will have the support of at least some representatives of the people, and I am sure that you will also have the support of the people themselves. By this what are you doing now? Unless I am wrong, and I am sure I am not wrong, the people are against this, and my Lord, I should like to see a Minister in England or the Government in England, however much they may be convinced of the wisdom of a measure like this, bringing a measure in Parliament; and my Lord, I should like to see Sir Verney Lovett as the Prime Minister. His Premiership will not be worth 24 hours, if he ever dared to bring such a Bill as this. Here the people are opposed and the representatives of the people are opposed: but say the executive Government 'We have got the welfare of the country at heart; we know your interests; we know your interests better, we know your welfare better than you understand it yourselves. We shall take these powers, and (to use again the words of the Hon'ble the Law Member) we are not going to surrender our considered judgment.' Well, if you think you are not going to surrender your considered judgment, I have not the power that you have. But I make bold to say that we are not going to surrender our considered judgment, and we say that you are wrong, and I hope that the consequences will be less disastrous than I expect."

The Hon'ble Dr. Tej Bahadur Sapru:—"My Lord, when the Bill was introduced in this Council I ventured to characterise it as undiluted coercion. During the month that has elapsed since, I have most dispassionately applied my mind to a consideration of this Bill; and, my Lord, although one might find a posisible excuse for altering the ordinary recognised rules of law 12-36 P.M.

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so far as Part I is concerned, I think he would be a bold man who could assert that Part II has the remotest resemblance to any law in any part of the world. Now, my Lord, we have been talking during the last two days of the Irish Coercion Bill. So far as I have been able to analyse that Act of 1882, it seems to me that it is possible to institute a comparison between that Act and some of the provisions of Part I of the present Bill. But there the parallel ends. When you come to examine the provisions of Part II of this Bill, what do you find? You find that all pretence to conformity with recognised judicial forms is frankly given up, and you find that it is the opinion of the Local Government which really decides for the time being that a person is or has been actively concerned in a particular area in any dangerous movement. It is not as if you ask the investigating authority to decide first as to whether that man is or has been concerned in any dangerous act or has been connected with any dangerous movement. You first decide it for yourself: you say to the investigating authority: 'This is our belief; we believe that this man has been concerned in a dangerous movement, and now we want you to investigate.' My Lord, I venture to repeat again that is not complying with recognised judicial forms of inquiry. I say deliberately it is nothing short of mockery. Well, either the Local Government feels confident of its own opinion or it does not. If it feels so absolutely confident, why then waste the time of three valuable public servants? Why then ask that particular individual to go unaided by counsel before the investigating authority and take further risks of having to answer questions which he may or may not appreciate, and why then ask the investigating authority to submit his report to the Local Government when that Local Government may either accept or refuse to accept it? All that seems to me to be perfectly superfluous. Now, my Lord, the Hon'ble Sir Verney Lovett has given us again this morning a very graphic picture of the sad condition of Bengal. My Lord, I do not dispute those facts. I will assume for the sake of argument that every single fact given by Sir Verney Lovett is absolutely correct; still the question which arises is, do you think that by providing these remedies you would be able to kill the mischief that has arisen in Bengal?

"What has been our experience during the last twelve years? Have you not come time after time to this Council and said: 'We find this law is inadequate, we find we cannot carry on the administration effectively, we find we cannot cope with the growing mischief, please give us more powers.' You have come every now and again with requests like this to the Council and the Council has rightly or wrongly complied with your request? What do we find now? You say: 'Well we have not been able to carry on the administration effectively.' The Hon'ble Sir James DuBoulay said: 'We have been so successful in the past that we are encouraged to ask you to continue a measure of this character.' Well I say with all respect to Sir James DuBoulay: 'Neither have you been successful in the past nor will you be successful with this measure in bringing about that result.' I say deliberately that you cannot possibly ignore the lessons of history. In England ever since 1882 you have had Coercion Acts, passed for Ireland. Have they solved the Irish questions? Has Ireland been reconciled, has Ireland not given its answer at a time when everyone expected that Ireland would have stood by England? Coercive measures have never succeeded in history, they may have satisfied the administration for the time being, they may enable the administration to imagine that it has been able to cope with a dangerous movement, but the dangerous movement is there and will be there in spite of coercive measures.

"My Lord, there is only one name to which I will refer. I do so with great pleasure, because so far as that name is concerned, my Hon'ble friend Sir Verney Lovett agrees that great weight is to be attached to it. I refer to Sir Narayan Chandravarkar. Sir Verney Lovett referred to the report of Sir Narayan Chandravarkar and Mr. Justice Beachcroft in support of his position. May I ask Sir Verney Lovett to read the letters of Sir Narayan Chandravarkar which have appeared recently in the 'Times of India.' If Sir Narayan Chandravarkar is to be quoted as an authority for the position that Sir Verney Lovett has taken, may I ask the Council to remember what this learned Judge has to say after having gone through the papers? He has publicly said of this measure that the remedy you are providing will prove worse than the evil it is intended to cure. My

Lord, it is not for me to say what other things you may do, but I can tell you that the provisions of Part II will never be acceptable. Much as I appreciate the desire of the Government, much as I sympathise with the Government in its desire to give protection and security to its servants, and to its subjects, much as I should like to co-operate with them in everything that seems reasonable, I think, my Lord, I owe it to you, I owe it to my conscience, to say that so far as Part II is concerned, its provisions will never be accepted by Indians, whether they are Extremists or whether they are Moderates."

The Hon'ble Mr. Surendra Nath Banerjea:—"My Lord, reference has been made to the condition of Bengal by some of the speakers. I feel that it is my duty to make a few observations with regard to that condition, and to show how far improvement may be secured by the provision which it is now proposed to enact into law. My Lord, I think it is admitted by all the upholders of official policy, as well as by its Indian critics, that the condition of Bengal has improved. I think this is admitted and it can be proved by a reference to facts and figures. As I had observed the other day, and the statement was not challenged by my Hon'ble friend the Home Member, that whereas the number of detenus this time last year was about one thousand, there are now less than four hundred. That is to say the condition of Bengal has so far improved that the Government has felt that it is in a position to release nearly 2-3rds of the number of the detenus, and not only that, but the conditions of their confinement have been very materially improved and relaxed; and the question has been asked in this Council in the course of the debate to which we have been listening, what may be the causes of this improvement? Here, again, we have got two versions. The popular version is that the Reforms scheme and the policy of the Government have had a large share in the process of tranquillising. My Hon'ble friend Mr. Chanda the other day read out a letter, I think from a person in confinement in the Andamans, a revolutionary. He distinctly said—and these revolutionaries are not in the habit of dissembling their ideas and convictions—that the Reform proposals with which the honoured name of your Excellency will for ever be associated, have had a mollifying effect on the situation. I have not the slightest doubt that this conciliatory policy has had an excellent effect, but whatever it may be, whether it be the policy of conciliation or whether it be the policy of coercion, or whether it be the joint operation of these two policies, the improvement is there and no one can question or gainsay that that is the common ground upon which we and the authorities take our stand. Let us apply that as a test by which to judge of this Bill. If the condition of Bengal is good, if the condition of Bengal has improved and is fairly satisfactory, is there any justification for this Bill or at any rate for this Part of the Bill, which admittedly is the most objectionable? Bengal is the greatest sinner in this matter, the Punjab occupies the next place. Well that being so, I think the position of Bengal is a crucial consideration in this matter. 12-45 P.M.

"The circumstances have changed, and therefore the recommendations of the Rowlatt Committee do not maintain the same ground as they did last year. And if that be so, I maintain that a law largely based upon these recommendations ought not to be accepted by this Council. My Lord, I am quite sure if there was any danger, any real menace to the State, this Council would be unanimous in supporting any proposal, any law that you might think fit to enact. The safety of the State is the supremest of all considerations, *salus civitatis suprema lex*. But the safety of the State is not the consideration here, the safety of the State is not involved here, therefore, your drastic provision is altogether out of proportion to the requirements of the situation, and it may do harm, it is bound to do harm, creating an atmosphere of uneasiness and excitement. It has already produced an atmosphere of conflict and controversy; it has already generated a large measure of alarm, anxiety and apprehension in the public mind. Is it desirable, is it expedient, ought not the Council to pause and hesitate before it enacts this Bill into law? My Lord, this Council has never shown the smallest hesitation in enacting such laws as you thought necessary for the ends of the administration, for the pacification and the tranquillising of the country. You passed the Seditious Meetings Act in 1910; you passed the Press Act; you

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passed the Criminal Law (Amendment) Act, you passed the Defence of India Act, was there any serious opposition in this Council on those occasions similar to the one which you are now witnessing? Is it not unique, is it not something which had never happened in the history of this country? Have you ever had such a large number of amendments, about 187 or so? Was there a midnight sitting, members going to sleep on the benches? It was a unique thing which never happened in the history of this Council, and you are enacting this measure in a half somnolent condition. What will the country say to it? I believe it will add to the anxieties, to the fears and the excitement it has already produced. Therefore, my Lord, having regard to the volume of opposition that has been awakened and to the fact that such opposition is unique in the history of this Legislative Council, and having regard to the fact that there is really no necessity for a drastic piece of legislation of this kind, and in view of the altered conditions of Bengal, I do implore your Excellency's Government to reconsider the situation and to give up at least this Part which seems to be the most offending part of this Bill."

12-55 P.M. **The Hon'ble Sirdar Sundar Singh Majithia:**—"My Lord, I do not want to express any opinion on the provisions of Part II of the Bill, but what I am concerned at present is, about certain remarks which fell from my Hon'ble friend Sir Verney Lovett about the members of my community who had returned from Canada and who, I am sorry to say, had been led astray by clever persons under the grievances and the hardships and suffering they had to undergo in their self-sought exile from their country, of being separated from their families and kith and kin by the laws of that country. It is no wonder then, that smarting under these grievances they were easily misled from their established traditions. My community, my Lord, has met with a merited measure of praise from the Rowlatt Committee, who in paragraph 137 say that in the Punjab 'the most martial section is the Sikh which, during the present war with less than one-hundredth of the population, has supplied about one-sixth of the fighting forces of the Indian Empire.' The services of my community from the time of their connection with the British are proof positive of what this small, though important, community has done in the past. The various fields of battle red with the blood of the community is a living testimony and will ever remain so of the loyalty of a community to which I have the honour to belong. You can, therefore, imagine, my Lord, how grieved I am at the allusion that the Sikh *Ghadr* conspirators were concerned in the troublous times in my province. My friend forgets that many of these people had totally estranged themselves from the Sikh religion and ideals of the community. The Rowlatt Committee admits these Sikh conspirators to be 'ignorant peasants who have been misled by Har Dayal' who by the way has now turned a new page in his life and become a Home Ruler. No wonder then that these ignorant people were misled by clever people who wanted to serve their own ends and who played upon the real grievances of these simple persons. But what do we find further in the report? A deputation of the leading Sikhs came forward to assist the authorities to deal with their kith and kin, and in paragraph 142 of their Report, the Rowlatt Committee say:—

'On the 31st January 1916, the Punjab Government wrote: 'The returned emigrants among the Sikhs are reported to be settling down, and the feeling among the Sikhs generally is reported to be more satisfactory than at any time for some years. The gallant behaviour of Sikh regiments at the front has done much to restore *amour propre* of the community which was apprehensive that its good name would suffer from the crimes of the returned emigrants. ' "

The Hon'ble Mr. K. V. Rangaswamy Ayyangar:—"I beg to rise to a point of order. May I know, your Excellency, if there is any connection of all this with the amendment before the Council?"

His Excellency the President:—"Yes, I am waiting to hear what it has got to do with the amendment."

300 **The Hon'ble Sir Verney Lovett:**—"I merely wish to make a personal explanation. All I wished to say was that I merely referred to the

Sikh conspirators of the *Ghadr* party who joined the attempt of a secret outbreak in 1915. No one is more desirous than I am of doing entire justice to the splendid loyalty and spirit of the Sikh community as a body."

The Hon'ble Sirdar Sundar Singh Majithia:—"My point, my Lord, is simply this, that many of these people were not Sikhs at all."

His Excellency the President:—"Yes, but the Hon'ble Member must adhere to the amendment before the Council. He is now entirely off the amendment."

The Hon'ble Mr. V. J. Patel:—"I have nothing more to add, my Lord."

The motion was put and the Council divided as follows:—

Ayes—21.	*Noes—35.*
The Hon'ble Sir Gangadhar Chitnavis.	His Excellency the Commander-in-Chief.
Mr. S. N. Banerjea.	The Hon'ble Sir Claude Hill.
Raja of Mahmudabad.	Sir Sankaran Nair.
Dr. T. B. Sapru.	" Sir George Lowndes.
Pandit Madan Mohan Malaviya.	Sir Thomas Holland.
" Mr. S. Sastri.	Sir William Vincent.
" Mr. R. Ayyangar.	Sir James Meston.
" " Mr. B. N. Sarma.	Sir Arthur Anderson.
" Mir Asad Ali, Khan Bahadur.	Sir Verney Lovett.
Sir Dinshaw Wacha.	Mr. H. F. Howard.
Mr. V. J. Patel.	Sir James DuBoulay.
Mr. M. A. Jinnah.	Mr. A. H. Ley.
Sir Fazulbhoy Currimbhoy.	Mr. W. M. Hailey.
Rai Sitanath Ray Bahadur.	Mr. H. Sharp.
Maharaja Sir M. C. Nandi.	Mr. R. A. Mant.
Rai Krishna Sahay Bahadur.	Maj.-Genl. Sir Alfred Bingley.
Raja of Kanika.	Sir Godfrey Fell.
Khan Bahadur Mian Muhammad Shafi.	Mr. F. C. Rose.
Mr. G. S. Khaparde.	Mr. C. H. Kesteven.
Rai B. D. Shukul Bahadur.	Mr. D. de S. Bray.
" Mr. K. K. Chanda.	Lieut.-Colonel R. E. Holland.
	Surg.-General W. R. Edwards.
	Mr. G. R. Clarke.
	Mr. H. Moncrieff Smith.
	Mr. C. A. Barron.
	Mr. P. L. Moore.
	Mr. M. N. Hogg.
	Mr. T. Emerson.
	Mr. E. H. C. Walsh.
	Mr. C. A. Kincaid.
	Sir John Donald.
	Mr. P. J. Fagan.
	Mr. J. T. Marten.
	Mr. W. J. Reid.
	Mr. W. F. Rice.

The amendment was therefore negatived.

[At this stage the Council adjourned for Lunch till 2-15 P.M.]

The Hon'ble Sir William Vincent:—"My Lord, I move that clause 20, as amended by the Select Committee, stand part of the Bill." 2-15 P.M.

The Hon'ble Mr. Kamini Kumar Chanda :—"My Lord, I beg to move that in clause 20 for the words 'in Council' the words 'with the consent of the Legislative Council of India' be substituted.

"I will not make any speech, my Lord. This matter was argued yesterday. The point we contend for is, that under the peculiar circumstances of this measure, it is desirable that the Governor General should receive the consent of this Legislative Council before a notification is issued under this section.

I beg to move this amendment."

2-17 P.M. **The Hon'ble Mr. V. J. Patel :**—"My Lord, as I have an amendment, I rise to support the amendment of my Hon'ble friend Mr. Chanda and merely desire to add this that, whatever may be said for not taking the sanction of the Legislative Council with regard to the provisions of Part I before issuing a notification, there is a good deal to be said in favour of taking such sanction in connection with Part II, because under Part I a man is to be put on his trial before a special tribunal. Under Part II, however, there is no such thing. It is necessary, therefore, that the representatives of the people should be given an opportunity of expressing their opinion on the question whether a notification under the provisions of Part II should issue or not."

The Hon'ble Mr. G. S. Khaparde :—"My Lord, I have got an amendment of the same kind. The reasons have been given by Hon'ble speakers already, so I do not propose to repeat them."

The Hon'ble Sir William Vincent :—"My Lord, I dealt with this question at some length yesterday, and I do not propose to repeat what I said then; but, for the reasons given in the case of the previous amendments, which apply equally to this one, I must oppose the amendment."

The Hon'ble Mr. Kamini Kumar Chanda :—"I have nothing more to add, my Lord."

The motion was put and negatived.

His Excellency the President :—"I think, Mr. Patel, you do not wish to press your amendment."*

*'That in clause 20 after the words 'he may' the words 'with the previous approval of the Indian Legislative Council' be inserted.'

The Hon'ble Mr. V. J. Patel :—"No, I do not."

His Excellency the President :—* "Nor you, Mr. Khaparde?"

*'That in clause 20 after the words 'he may' the words 'with the concurrence of the Indian Legislative Council' be inserted.'

The Hon'ble Mr. G. S. Khaparde :—"No, my Lord."

2-19 P.M. **The Hon'ble Rai Bahadur B. D. Shukul :**—"Your Excellency, before I move this amendment formally, I beg to point out that I have made an omission in the second part of the amendment. Will your Lordship allow me to have it corrected?"

His Excellency the President :—"What are you referring to?"

The Hon'ble Rai Bahadur B. D. Shukul :—"The second part of the amendment reads :—

'If within the period of 14 days after the notification has been laid before the Indian Legislative Council, and a Resolution is carried by the Council, then, etc.'

"Between the words 'Council' and 'then', there ought to have been the words 'that such a notification shall not continue in force'.

"This is an omission: I cannot say whether it is due to a slip of the pen or a mistake in printing, but it is a clerical error after all."

The Hon'ble Sir William Vincent:—"My Lord, I am informed that the amendment in the Agenda is exactly as proposed by the Hon'ble Member."

His Excellency the President:—"Do you raise any objection?"

The Hon'ble Sir William Vincent:—"I am afraid I cannot hear the Hon'ble Member."

His Excellency the President:—"I understand you wish to put in certain words?"

The Hon'ble Rai Bahadur B. D. Shukul:—"Yes, my Lord. I wish to put in these words 'that such a notification shall not continue in force' between the words 'carried by the Council' and 'then.' Without these words the clause will not be complete."

His Excellency the President:—"He means 'and a Resolution is carried by the Council that such a notification shall not continue in force, then such notification shall not continue in force, etc.' Go on, Mr. Shukul."

The Hon'ble Rai Bahadur B. D. Shukul:—"My Lord, I beg to move the following amendment:—

'That to clause 20 the following proviso be added:—

'Provided that such notification shall be laid before the Indian Legislative Council within seven days after the making thereof if the said Council is then sitting and if not sitting, within seven days after the next meeting of the Indian Legislative Council. If within the period of 14 days after the notification has been laid before the Indian Legislative Council and a Resolution is carried by the Council that such notification shall not continue in force, then such notification shall not continue in force, but shall be deemed to have expired. When such notification expires the powers conferred by this Act shall cease to be in force.'

"My Lord, it is not concealed from you what alarm this Bill has created in the country, and particularly Part II. My Hon'ble friends, the previous speakers, have already pointed this out, and it was for these reasons that they asked for the deletion of this Part. The next best was asked for by my Hon'ble friends Messrs. Khaparde and Patel, but this also has not been conceded. This is the third best that I am now asking for.

"My Lord, the object of this amendment is practically the same as that of the amendment just moved by my Hon'ble friends Messrs. Patel and Khaparde, and I fully associate myself with all that they have said on the subject, particularly as regards the probable danger of giving the Executive an altogether free hand in a matter so serious and delicate as this. My Lord, Part II contains provisions of a very drastic nature. Thereby we are substituting an executive inquiry for a judicial trial, and further arming the executive with extraordinary powers to take away the rights and liberties of the people. The interest of the whole country as also of Government demands that such an action of the Executive Government should be scrutinised and adequate safeguards imposed upon their action especially in a matter which involves the abrogation of all the accepted principles of British law and justice.

"It is a sound maxim of politics as enunciated by Lord Macaulay, that eminent English Jurist, that 'since we cannot, without the risk of evil from which the imagination recoils, employ physical force as a check on misgovernment, it is evidently our wisdom to keep all the constitutional checks on misgovernment in the highest state of efficiency to watch with jealousy the first beginning of encroachment and never to suffer irregularities even when harmless in themselves to pass unchallenged lest they acquire the force of precedents.' It is, my Lord, such a constitutional check upon the executive action of the Government that I wish to be imposed. I do not ask the Government to accept any novel principle of law or practice; rather, I urge upon them to bring the provisions of this law into conformity with the law and practice as obtaining in the United Kingdom and Ireland. The provision which I want to be inserted in this section already finds place in the Criminal

Law and Procedure (Ireland) Act, 1887 (50 and 51 Vict., ch. 20) in clause 6 which reads thus:

'(2) A copy of every special proclamation shall be laid before each House of Parliament within seven days after the making thereof, if Parliament is then sitting and if not, within seven days after the next meeting of Parliament.'

"It also provides that—

'(5) When a special proclamation expires or is revoked, the powers conferred by the seventh section of this Act shall for the time being cease to be in force in respect of the association or associations as to which such special proclamation has expired or been revoked, etc., etc.'

"Well, my Lord, if such is the law in Ireland why should not a similar provision be made here in this Act? My suggestion would not cause any inconvenience to the executive, as the executive will be quite at liberty to take action under this section should a case of emergency arise, even without any previous reference to the Legislative Council, but what I am very particular about is that the executive should be under an obligation to submit their proposals and notification to the Legislative Council. The matter, my Lord, is so serious, so grave, so disquieting, involving as it does a question of life and death to the people, that it is but proper that their accredited representatives, your Councillors, should have an opportunity of discussing the pros and cons of the whole question and be convinced of the necessity of the extraordinary legislation you deem necessary in order to meet extraordinary circumstances. My Lord, you should not be suspicious of the non-official members of your Council at least that they will not support you in the nick of time. The past record of this Council should encourage you, I think, to have confidence in us. During the war time whatever stringent and repressive measures you proposed, they received our unanimous consent and support, and on no previous occasion have the non-official members of this Council failed you at any critical moment. It is only a few months back that you asked us to vote for 45 millions of the war expenditure and left the decision to us, and what was the result? We approved of it and did so against the wishes of the people of the country and with the full knowledge that a poor country like India could but ill-afford to incur that huge expenditure. So, my Lord, you have no reason to be nervous on that account. Have confidence in your Legislative Council and take it from me, my Lord, that the Council will not fail you. Rather by enlisting public opinion on your side you will be strengthening your own hands, and the operation of the Act will be very much facilitated. Certainly it would be a distinct advantage to the executive Government if their action were confirmed by the Legislative Council, as they would then have the support of the representative opinion of the people at their back.

"With these words, my Lord, I move this amendment and hope it will be accepted."

The motion was put and negatived.

2-30 P.M. **The Hon'ble Rao Bahadur B. N. Sarma:**—"My Lord, I have fully discussed already both yesterday and this morning my reasons in support of this amendment, which I beg to formally move.

"That to clause 20 the following provisos be added:—

'Provided that no action shall be taken by the Governor General in Council, without giving the Indian Legislative Council or the Legislative Council of the province in respect of which such a notification is proposed to be made an opportunity of expressing its opinion by a Resolution passed on the subject.

'Provided further that such notification shall at any time after the expiry of one year from the date thereof be withdrawn on the recommendation of the Indian Legislative Council or the Legislative Council of the province in respect of which it may have been made by a Resolution passed by three-fifths of the members of either of the said Councils.'

"This is a preventive measure, where the scheduled offences are not yet prevalent, the amendment is suggested to ensure that the people should have due warning and that the Council should have an opportunity of expressing its opinion. I believe I need add no further argument in support of my amendment."

The motion was put and negatived.

The Hon'ble Mr. V. J. Patel:—"My Lord, I beg to move— 2-34 P.M.

'That in clause 20 for the words 'scheduled offences' the words 'offences against the State' be substituted.'

"The amended clause would read thus:—

'If the Governor General in Council is satisfied that anarchical or revolutionary movements, which are in his opinion, likely to lead to the commission of offences against the State, are being extensively promoted in the whole or any part of British India, etc. etc.'

"My Lord, in the Bill as introduced in this Council, clause 20 contained the words 'offences against the State.' The offences against the State are 10 or 11 in number according to the Indian Penal Code. The scheduled offences, my Lord, are numerous. This change has been made by the Select Committee. We have been told times out of number that the Select Committee have made several alterations in the Bill as it stood when introduced. I grant that they did make several alterations in the Bill; but I contend, my Lord, that all those amendments are on non-essentials. The only amendment on any important point is the one that we are now considering.

"It is a boon that comes to the country from the Select Committee, call it a concession if you like; and I on behalf of the country respectfully decline to accept that boon or that concession. I say, please put us back where we were when the Bill was introduced, and we shall be thankful to the Select Committee and your Excellency's Government and this Council too."

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I have got the same thing in slightly different language, and think that if my Hon'ble friend, Mr Patel, will just consider the point he will see that the words in my amendment ought to be accepted in preference to his amendment. My amendment is:— 2-35 P.M.

'That in clause 20 for the words 'scheduled offences' the words 'offences under Chapter VI (other than an offence under section 124-A) and sections 131 and 132 of the Indian Penal Code' be substituted.'

"My Lord, 'scheduled offences' occurs in the original Bill in this clause and my Hon'ble friend evidently wants this reinstated; but there is another thing; when this term found place in this clause in the original Bill there was the definition of 'scheduled offence' given in clause 1 where we find that scheduled offence is 'Any offence under Chapter VI (*i.e.*, including 124-A) and sections 131 and 132 of the Indian Penal Code.' But in revising this Bill the Select Committee have omitted the definition of scheduled offences, and in the list of scheduled offences they have inserted about 50 offences as I described it the day before yesterday. Under these circumstances, by reason of the fact that a new definition of scheduled offences has been inserted in the Bill, it will be necessary to adopt the definition which I have suggested in my amendment in place of 'scheduled offences' of my Hon'ble friend, Mr. Patel. With these remarks, I move my amendment."

His Excellency the President:—"Do you accept it, Mr. Patel?"

The Hon'ble Mr. V. J. Patel:—"I have no objection, my Lord, to accepting it."

His Excellency the President:—"Do you withdraw your amendment in favour of Mr. Chanda?"

The Hon'ble Mr. V. J. Patel:—"I would rather move the amended amendment."

The Hon'ble Mr. Chanda's amendment was put and negatived.

The motion that clause 20 as amended by the Select Committee stand part of the Bill was put and agreed to.

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The Hon'ble Sir William Vincent:—"My Lord, I move that clause 21 as amended by the Select Committee stand part of the Bill."

The Hon'ble Mr. Kamini Kumar Chanda:—"May I draw your Lordship's attention to No. 95? It is really a part of this amendment, and I think it ought to go with it. No. 88 deals with the whole clause and 95 with one part of it."

His Excellency the President:—"Do you wish to reserve your remarks on this amendment till you come to 95?"

The Hon'ble Mr. Kamini Kumar Chanda:—"I want to move these together. It is the same clause; I do not know how this came to be separated from the other."

His Excellency the President:—"I do not know whether any embarrassment will be caused by putting these two amendments together."

The Hon'ble Mr. Kamini Kumar Chanda:—"I think it will remove embarrassment."

His Excellency the President:—"Well, you must take it upon your own head."

2-50 P.M. **The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, then I move this amendment:—

'That in clause 21 (*1*) for the words 'by order in writing containing a declaration to that effect give all or any of the following directions, namely, that such persons' the following words be substituted:—

'Either itself or through any officer authorised in that behalf apply to the investigating authority hereinafter mentioned having jurisdiction in the area concerned for an order giving directions specified either in clause (*a*) or in clauses (*b*) to (*e*) or in any one of those clauses against any person, and such investigating authority after taking such application into consideration and such other or further materials if any which it may call for may pass an order either calling upon such person to show cause within a certain time named by it why he should not carry out such directions or pass an order calling upon him provisionally to carry out such direction or directions and show cause why such order should not be made absolute.

'(*a*) And in the same clause—for the word 'shall' in sub-clause (*a*) the words 'to execute' be substituted and the word 'execute' be deleted.

'(*b*) For the word 'shall' in sub-clauses (*b*) to (*e*) when that word occurs for the first time the word 'to' be substituted.

'(*c*) In sub-clause (*d*) the words 'in the opinion of the Local Government' be deleted and the word 'reasonably' be inserted before the word 'calculated'.

'That in clause 21 (*1*) for the words 'give all' the words 'give the directions in clause (*a*)' and for the words 'following directions' the word 'directions' in clauses (*b*) to (*e*) be substituted.'

"If these amendments are incorporated in the clause, my Lord, it will read like this:—

'21 (1) Where, in the opinion of the Local Government, there are reasonable grounds for believing that any person is or has been actively concerned in such area in any movement of the nature referred to in section 20, the Local Government may either itself or through any officer authorised in that behalf, apply to the investigating authority hereinafter mentioned having jurisdiction in the area concerned for an order giving directions specified either in clause (*a*) or in clauses (*b*) to (*e*) or in any one of those clauses against any person, and such investigating authority after taking such application into consideration and such other or further materials, if any, which it may call for may pass an order either calling upon such person to show cause within a certain time named by it why he should not carry out such directions or pass an order calling upon him provisionally to carry out such direction or directions and show cause why such order should not be made absolute.

Powers exercisable when Part II is in force.

(*a*) to execute within such period as may be specified in the order a bond with or without sureties undertaking, for such period not exceeding one year as may be so specified, that he will not commit, or attempt or conspire to commit, or abet the commitment of, any offence against any provision of the law which is referred to in the Schedule;

(*b*) to notify his residence and any change of residence to such authority as may be so specified;

(*c*) to remain or reside in any area in British India so specified :

Provided that, if the area so specified is outside the province, the concurrence of the Local Government of that area to the making of the order shall first have been obtained ;

(*d*) to abstain from any act so specified which is reasonably calculated to disturb the public peace or is prejudicial to the public safety ; and

(*e*) to report himself to the officer in charge of the police-station nearest to his residence at such periods as may be so specified.'

"My Lord, I shall confess at once that the object of this amendment is to destroy the principle of the Bill. My object is to take away the machinery by which you propose to arm the executive with powers of the judiciary to punish a man yourself and then call upon an investigating authority to inquire into the matter. I need not dilate upon this at any length ; it has been more than once dilated upon. My object, my Lord, is to maintain, to establish permanently the British tone of administration of justice, not of the administration—that is a phrase I do not understand, it is unintelligible to me as I said in the evidence before the Royal Commission—but I wish to maintain the British tone of administration of justice.

"I said in my evidence before the Commission that we wish to maintain the British tone of justice, and my amendment is drawn up with that object. This clause is designed to arm the executive with power. It says :—

'(*b*) shall notify his residence and any change of residence to such authority as may be so specified,

(*c*) shall remain or reside in any area in British India so specified,

(*d*) shall abstain from any act so specified which in the opinion of the Local Government is calculated to disturb the public peace or is prejudicial to the public safety ; and

(*e*) shall report himself to the officer in charge of the police-station nearest to his residence at such periods as may be so specified.'

"Now, my Lord, I maintain that the circumstances have changed from what they were formerly. I put it to the Council, are the recommendations which might have been suitable twelve months ago suitable now ? The circumstances which gave rise to the law have changed and therefore the recommendations of the Committee do not maintain their same force, to put it as low as that, as they did last year. Then there is a point which seems to have inadvertently come in. You say in clause 21 'where in the opinion of the Local Government . . . . the Local Government may by order in writing containing a declaration to that effect give all or any of the following directions :—(*a*) (*b*) (*c*) (*d*) and (*e*).' Now the man will come under the orders from (*b*) to (*e*), then what is the necessity of the order under (*a*) ? I do not think I need say more on the point."

The Hon'ble Rao Bahadur B. N. Sarma :—"My Lord, I think it would be convenient at this stage if we could clearly understand whether there is any chance of Government accepting the principles upon which a number of our amendments are based. It will be time enough to discuss them if the principles are accepted. I take it, my Lord, that the first part of this amendment deals with the question as to whether an investigation should precede the *interim* order of the Government or succeed it. It is the first part of the amendment. A large number of us are of opinion that it would be safer and in consonance with the expediency of the matter if the Government armed themselves with the opinion of the investigating authority before it passed an order of its own on the subject. The accused person would be prejudiced to a certain extent by reason of the *interim* order of such an authoritative body as the Local Government. Practically the same materials which the Government has in its possession upon which to pass its orders will be placed before the investigating authority ; therefore it will be a mere repetition of the procedure adopted with reference to the Rowlatt Committee. The Government had certain materials on hand ; they had the opinions of the Local Government 2-52 P.M.

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The Hon'ble Sir William Vincent :—"May I rise to make a personal explanation ? The Hon'ble Member said it would be helpful if I gave 2-54 P.M.

certain information. I am prepared to accept an amendment on the lines of the Hon'ble Mr. Sastri's amendment No. 89, it corresponds very nearly with the Hon'ble Mr. Patel's amendment No. 90 and provides that the Local Government before making a preliminary order should lay the papers before a judicial officer. I may say, however, that we do not propose to convert the investigating authority into a judicial authority."

The Hon'ble Mr. V. J. Patel :—" My amendment is similar to the Hon'ble Mr. Sastri's. Will the Hon'ble the Home Member say if he has any objection to have mine instead of Mr. Sastri's ? "

The Hon'ble Sir William Vincent :—" I have accepted Mr. Sastri's ; it is the one that seemed most suitable."

The Hon'ble Rao Bahadur B. N. Sarma :—" May we still suggest that the Government should be pleased to consider whether they will act on the recommendations of the investigating authority ? I am suggesting that it may be inconvenient to the investigating authority as well as to the accused person to have two decisions against him instead of one as is proposed in the Bill. The Local Government would place the materials before the Sessions Judge or an officer of that standing. The only object served thereby would be to weigh the evidence and matters of that description. I take it that the Local Government would have many officers who are accustomed to weigh evidence and who know as much law as an ordinary Sessions Judge. There is also the difficulty that the learned Sessions Judge would have only an *ex-parte* statement made before him and not the materials furnished by both sides and, therefore, ordinarily he would arrive at practically the same conclusion as the Local Government, that is the Local Government would be fortified by the previous recommendation of the Sessions Judge."

The Hon'ble Sir William Vincent :—" I was asked by the Hon'ble Member to give an explanation on a point, and when I do so he proceeds to base his arguments on an amendment which has not yet been moved."

The Hon'ble Rao Bahadur B. N. Sarma :—" I am only asking the Hon'ble the Home Member to consider whether it is possible to extend the concession further, and instead of taking the opinion of the Sessions Judge, we think the Government might take the opinion of the investigating authority."

The Hon'ble Sir George Lowndes :—" The Hon'ble Member is not entitled to speak on an amendment which is not before the Council. The amendment before the Council is that moved by the Hon'ble Mr. Chanda."

The Hon'ble Rao Bahadur B. N. Sarma :—" I shall confine myself to the point. It really is whether any advice is to be taken by the Local Government prior to passing its order. That is one point, the other is whose advice is to be taken ? I say that previous advice should be taken before an order is passed by the Local Government. I ask for the acceptance of that principle. I go further and say that the principle would be practically nugatory unless it be the opinion of a person who can weigh the materials on both sides and then come to a decision and advise the Government as to what is to be done. I do not want a double procedure and a triple procedure merely lengthening the proceedings and doing no good to anybody. I want a simple procedure, a practicable procedure, a speedy procedure, a procedure that is likely to attain the objects which we have in view. Go straight to some authority, get as speedy a trial as possible, let the Local Government make up its mind and let the decision be final for the purposes of this Court and I can understand it: I therefore request that that principle which is embodied in the first part of the Hon'ble Mr. Chanda's amendment may be accepted."

2-56 P.M. **The Hon'ble Khan Bahadur Mian Muhammad Shafi :**—" My Lord, I would advise my friend, Mr. Chanda, to withdraw his amendment in favour of the amendment which stands in the name of my Hon'ble friend,

Mr. Sastri, and my reason is a very simple one. The idea embodied in the Hon'ble Mr. Chanda's amendment was very carefully considered by some of us at the time when the Hon'ble Mr. Sastri's amendment was drafted, and of the two courses proposed, one by Mr. Chanda and the other by Mr. Sastri, the one proposed by Mr. Sastri was preferred for a very obvious reason to that which the Hon'ble Mr. Chanda proposes, that before action is taken under Part II, the Local Government shall move the investigating authority to pass, so to speak, an *ad interim* order before the final inquiry is held and the order is passed. Now the danger of this procedure is an obvious one. If the Local Government places all the material in its possession before the investigating authority, and the investigating authority after careful consideration of those materials passes an *ad interim* order, it may to a certain extent have prejudged the accused person who is to be dealt with under Part II. While if the course suggested by Mr. Sastri is adopted, the Local Government will place the material in its possession before the District and Sessions Judge and take his opinion thereon, and after having taken his opinion it will pass an *ad interim* order. So that in resorting to the procedure suggested by Mr. Sastri the person to be proceeded against is in no way prejudiced so far as his ultimate enquiry into the case by the investigating authority is concerned, and I am sure that my Hon'ble friend will see that it is far better that the case should be placed before the investigating authority without the investigating authority having any pre-conceived ideas whatsoever with regard to his case rather than they should prejudge him before dealing with it. And I would also request my friend, Mr. Patel, to withdraw his amendment in favour of that of the Hon'ble Mr. Sastri for a very simple reason. He would make the action of the Local Government depend on the previous approval of the District and Sessions Judge of the district. Now the District and Sessions Judge of the district to which the person concerned may belong obviously is in touch with the local atmosphere which may possibly, I say possibly, prejudice his case. There is the danger of the District and Sessions Judge knowing something about his case before he gives an opinion on the requisition of the Local Government. Therefore it is far better that the Local Government may, if it thinks fit, be in a position to consult the District and Sessions Judge other than the district judge of the place to which the accused person may belong, than that the Local Government should by Statute be compelled to consult only the district judge of the district in which the accused person resides. I hope my Hon'ble friend, Mr. Chanda, will, on consideration of the point I have placed before him, withdraw his amendment in favour of the Hon'ble Mr. Sastri's amendment."

The Hon'ble Mr. V. J. Patel:—" My Lord, as a reference has been made to my amendment by the Hon'ble Mr. Shafi

His Excellency the President:—" Wait a minute, Mr. Patel. I was wrong in allowing Mr. Shafi to refer to your amendment. I think it will be time when we come to your amendment. At the present moment we are on Mr. Chanda's amendment.

" Now, Mr. Chanda, you can go on."

The Hon'ble Mr. Kamini Kumar Chanda:—" My Lord, with all respect to my Hon'ble friend, Mr. Shafi, I find it difficult to accept his suggestion for this reason. While the Hon'ble the Home Member looks upon the right of the executive to assume powers of the judiciary as the frame-work of its machinery, I look upon it as a principle to see that the executive will in no way assume the powers and functions of the judiciary. With regard to the suggestion of my Hon'ble friend, Mr. Shafi, that if the matter is placed before the investigating authority in the first instance it would be to the disadvantage of the accused, as the investigating authority will have formed an opinion and that will prejudice the accused person, my answer is that it is not so. This is the practice which obtains in regard to complaints before Magistrates. The Magistrate after hearing the story of the complainant, if he thinks fit, issues a process against the accused, and this fact does not certainly prejudice the case of the accused, because it is 2-1 P.M.

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only after hearing both sides that the Magistrate forms his judgment For these reasons I am sorry I cannot accept the suggestion of my Hon'ble friend, Mr. Shafi."

His Excellency the President:—"The question is that the following amendment be made in the Bill :—

'That in clause 21 (*1*) for the words 'by order in writing containing a declaration to that effect give all or any of the following directions, namely: that such persons' the following words be substituted :—

'Either itself or through any officer authorised in that behalf apply to the investigating authority hereinafter mentioned having jurisdiction in the area concerned for an order giving directions specified either in clause (*a*) or in clauses (*b*) to (*e*) or in any one of those clauses against any person, and such investigating authority after taking such application into consideration and such other or further particulars if any which it may call for may pass an order either calling upon such person to show cause within a certain time named by it why he should not carry out such directions or pass an order calling upon him provisionally to carry out such direction or directions and show cause why such order should not be made absolute.

(*a*) And in the same clause for the word 'shall' in sub-clause (*a*) the words 'to execute' be substituted and the word 'execute' be deleted.

(*b*) For the word 'shall' in sub-clauses (*b*) to (*e*) when that word occurs for the first time the word 'to' be substituted.

(*c*) In sub-clause (*d*) the words 'in the opinion of the Local Government' be deleted and the word 'reasonably' be inserted before the word 'calculated.'

For the words 'give all' the words 'give the directions in clause (*a*)' and for the words 'following directions' the words 'directions in clauses (*b*) to (*e*).' be substituted.'

The motion was put and negatived.

The Hon'ble Mr. Srinivasa Sastri:—"My Lord, I move the amendment that stands in my name—

'That in clause 21 (*1*) for the words 'may by order in writing containing a declaration to that effect' the following words be substituted :—

'Shall place all the materials in its possession relating to his case before a judicial officer not below the rank of a District and Sessions Judge and take his opinion thereon. After considering such opinion, the Local Government, if it is satisfied that such action is necessary, may, by order in writing containing a declaration to the effect that such person is or has been actively concerned in such area in any movement of the nature referred to in section 20.'

"I do not think it is necessary to read it. The Hon'ble Mr. Shafi in speaking to the former amendment has explained fully the purpose of my amendment, and as I understand the Hon'ble the Home Member is willing to accept its principle and has carefully put it in improved language, I think I need do nothing more than place it before the Council."

3-5 P.M. **The Hon'ble Sir William Vincent:**—"My Lord, I am prepared to accept the substance of this amendment. I suggest an altered form so as to make the officer before whom the papers are laid a judge of somewhat higher status. The amendment, if the Hon'ble Member would accept the modified form, would run thus :—

'May place all the materials in its possession relating to his case before a judicial officer who is qualified for appointment to the High Court and take his opinion thereon.'

"That is, the officer must not only be a judge but one who has served as such for three years. I am unable to accept the exact term 'District and Sessions Judge' for the reason that the headquarters of the Local Governments of three Presidencies at least are situated in places where there are no District and Sessions Judges. I have therefore taken a judicial officer of three years' standing. I hope that will meet the Hon'ble Member."

His Excellency the President:—"Mr. Patel, do you wish to make any remarks?"

The Hon'ble Mr. V. J. Patel:—"My amendment is quite different your Excellency."

The following motion was put and agreed to :—

"That in clause 21(*l*) for the words 'may by order in writing containing a declaration to that effect' the following words be substituted :—

'May place all the materials in its possession relating to his case before a judicial officer who is qualified for appointment to the High Court and take his opinion thereon. After considering such opinion, the Local Government, if it is satisfied that such action is necessary, may, by order in writing containing a declaration to the effect that such person is or has been actively concerned in such area in any movement of the nature referred to in section 20.'"

The Hon'ble Mr. V. J. Patel :—"Your Excellency, I beg to move 3 7 P.M. that in clause 21 (*l*) after the words 'the Local Government may' the words 'with the previous approval of the District and Sessions Judge of the district' be added. As the previous amendment has been accepted by Government, I do not think it would be possible for Government, even if they are willing, to accept this amendment. The point I wanted to make really is this. If you are going to take the opinion of a judicial officer who is qualified to be appointed as a High Court Judge, I ask you whether you will not consent to be bound to accept that opinion? I say it is no use taking the opinion of a judicial officer of that standing if you are not prepared to accept that opinion. I therefore move the amendment and trust the Council will consider it."

The Hon'ble Sir William Vincent :—"My Lord, in view of what has already taken place over Mr. Sastri's amendment, it is obviously impossible that the Government should accept the present one of Mr. Patel's."

The motion was put and negatived.

The Hon'ble Rai Bahadur B. D. Shukul :—"My Lord, I beg 3.9 P.M. to move that in clause 21(*l*) after the words 'declaration to that effect' the following words be inserted :—

'Lay information before a Magistrate of the first class having jurisdiction in the area and the said Magistrate may on being satisfied of the truth of the information by following the procedure laid down in the Criminal Procedure Code for demanding security.'

"Clause 21, sub-clause (1) will then read thus :—

'(1) Where, in the opinion of the Local Government, there are reasonable grounds for believing that any person is or has been actively concerned in such area in any movement of the nature referred to in section 20, the Local Government may lay information before a Magistrate of the first class having jurisdiction in the area and the said Magistrate may, if satisfied of the truth of the information by following the procedure laid down in the Criminal Procedure Code for demanding security.'

"My Lord, so far as the first portion of my amendment is concerned, the principle involved in it has already been accepted by the Government. Now what I have asked for is only that if the Local Government finds that there are reasonable grounds to proceed against any person under this section, the matter should be referred to a 1st Class Magistrate and should be entirely left to him for disposal. My Lord, the principle that an inquiry under the orders of the Executive Government should merely supplement and not supplant the judicial inquiry has been thoroughly discussed, and I will not dwell on the point any further. If my suggestion is accepted, it will simplify the procedure and will be in strict accordance with the spirit of the law."

The motion was put and negatived.

The Hon'ble Rao Bahadur B. N. Sarma :—"My Lord, I beg to move that in clause 21 (1) after the word 'bond' in sub-clause (*a*) the words 'in such amounts as may be prescribed' be inserted and sub-clauses (*c*) and (*e*) be deleted.

"I ask specifically that the Local Government may prescribe the amounts in which the bond should be executed so that there may be no doubt on the point. I find on referring to clause 31 (1) that the rule-making power gives the Local Government power to prescribe the authorities before whom and the manner in which the bond under this Part shall be executed. I think there would be some difficulty as to the amounts in which bonds should be executed, and I think it would be better if the Local Government when it

issues an *interim* order, asking an accused person to execute a bond, prescribe clearly the amount in which such bond should be executed. That is the first Part. Then, my Lord, I lay special emphasis upon the deletion of clause (*c*). The Government is to be empowered, in passing an *interim* order, to ask that a person 'shall remain or reside in any area in British India so specified:

Provided that, if the area so specified is outside the province, the concurrence of the Local Government of that area to the making of the order shall first have been obtained.'

"I have already alluded to the fact that Part II relates to a less serious state of circumstances where there is no large prevalence of crime connected with revolutionary or anarchical movements, and we are now dealing with *interim* orders. I would respectfully submit that it would be extremely inconvenient if the Government should pass any orders before the investigating authority of the place makes its recommendations. If a person is to be sent away, say from Madras to Assam under this *interim* order, it would be rather difficult for him to conduct his proceedings under clause 25 before the investigating authority. You may tell me such a thing is not likely to happen. If such a thing is not likely to happen, I hope you will concede that the power need not be given. I also submit that it is a very drastic power, and that it should not be employed at this stage or under this Part of the Act.

"Such powers may be needed if there is a large prevalence of crime, but in providing for preventive measures, I hope the Government will not ask for power enabling them to deport or imprison a person, especially without making any provision whatsoever for that person maintaining himself or his family. These are some of the practical concrete difficulties I find in the legislature agreeing to this power being given under sub-clause (*c*).

"Then, my Lord, I think under this Part the command to notify his residence and any change of residence, which would be attended with the penalty of imprisonment and fine if a breach thereof is committed, is amply sufficient, and a person need not be asked to report himself to an officer in charge of the police-station in the first instance.

"Well, I do not lay so much stress upon sub-clause (*e*), but I hope Government will be able to concede my request in respect of sub-clause (*c*) and also fix the amount of the bond, with or without sureties, which a person has to execute."

3-16 P.M. **The Hon'ble Sir William Vincent**:—"My Lord, the drafting of the clause as to the furnishing of bonds I think follows exactly the drafting of the Code of Criminal Procedure. It seems to me, my Lord, unnecessary that the Local Government should prescribe by rule the amount of a bond which it is itself going to demand. There is very little difference between fixing it by rule or by order. Therefore, I suggest to the Hon'ble Member that the first modification which he proposes in the Bill would really make very little difference.

"The other points which he mentions are that he wishes to delete sub-clauses (*c*) and (*e*). Well, in embodying these sub-clauses in the Bill we followed exactly what the Rowlatt Committee recommended and we adopted what we know to have been a very effective if not a severe form of restraint.

"My Hon'ble friend is naturally anxious that the well-being of any person detained away from his home should be considered. We do provide for their support—I believe I am correct in this—if I am not correct I shall have to withdraw it, but I have every reason to think that I am correct—we also have Visiting Committees to see them and to make recommendations to the Local Government as to any changes that are necessary to secure the welfare of the persons interned. I do not think we can make this provision more lenient."

3-19 P.M. **The Hon'ble Mr. W. A. Ironside**:—"May I just rise to make an explanation? The Hon'ble the Home Member has given a few details as to what is done on behalf of these young men, let me amplify this information. A little while ago the police called on me and asked me to give two of these

young anarchists a fresh start in life; I agreed and together we hope to do this."

The Hon'ble Rao Bahadur B. N. Sarma:—"My Lord, with reference to the first part of my amendment I request the Hon'ble the Home Member to reconsider the question. 3-20 P.M.

"Section 112 of the Criminal Procedure Code directs that, when a Magistrate acts under this section, 'he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, etc.' It is of some importance as to whether the discretion is in the hands of Local Government or of some officer before whom the man may be directed to appear. In the first place, I submit the order is to be served on the accused person; the order will be the order of the Local Government, the officer has simply to carry it out. Therefore, the order would be incomplete unless the amount is inserted therein. That was the reason why I suggested that it might perhaps be made clear that the Local Government should look into it. It may not be done by rule because the amount is to be fixed in each case, and I want that the discretion should be in the hands of the Local Government which would ordinarily have regard to any reports which they might receive from the officers subordinate to it.

"Then, with regard to sub-clause (*c*), I took it that the Hon'ble the Home Member said that provision would be made by the Government for the subsistence of the persons who may be directed to reside in special localities where it might be difficult for them to carry on their customary professions. At any rate I so took it; but I am not able to see any specific provision in this Bill. And the Visiting Committees which are provided for under clause 30 are simply to report upon the welfare and treatment of persons under restraint under this Bill. Clause 30 says that the Local Government 'shall by rules prescribe the functions which these Committees shall exercise.' I do not think that these Committees are going to be given funds by the Local Government to administer them. It may be that that is contemplated, but I do not think that power is given here to the Local Government to entrust funds to these Committees for the purpose of looking after the welfare and treatment of persons under restraint. If that is to be the object

The Hon'ble Sir William Vincent:—"May I rise to explain? I never suggested anything of the kind."

His Excellency the President:—"Did the Hon'ble Member hear what the Hon'ble Sir William Vincent said?"

The Hon'ble Rao Bahadur B. N. Sarma:—"My object is to compel Local Governments to provide the means whereby the Visiting Committees can look after the welfare and treatment of persons interned."

The motion was put and negatived.

The Hon'ble Mr. V. J. Patel:—"May it please your Excellency, I beg to move the following amendment:— 3-23 P.M.

'That for sub-clause (*d*) of 21 (*1*) the following be substituted:—

'(*d*) shall abstain from any act so specified which, in the opinion of the Local Government, is likely to lead to the commission of scheduled offences.'

The clause at present reads thus:—

'Shall abstain from any act so specified which, in the opinion of the Local Government, is calculated to disturb the public peace or is prejudicial to the public safety.'

"My Lord, I feel confident that this small amendment will be accepted by the Hon'ble the Home Member. It is contended that the intention of the Government in enacting this Part is to deal with anarchical or revolutionary movements which are likely to lead to the commission of scheduled offences. When a person is dealt with under clause 21 of this Part by the Local Government they should have power to pass any order which is consistent with the avowed object referred to in clauses 20 and 21. The proposed sub-clause says

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the man 'shall abstain from any act so specified which, in the opinion of the Local Government, is calculated to disturb the public peace or is prejudicial to the public safety.'

"I desire by this amendment to make the intention of Government clear by restricting the sub-clause (*d*) to acts likely to lead to the commission of scheduled offences. I am sure my Hon'ble friend the Home Member will accept this amendment."

The Hon'ble Sir William Vincent :—" My Lord, I thought the Hon'ble Member was well aware what the position was in regard to this. May I refer him to the Report of the Committee where they elaborate the powers to be taken. Among the first group of powers he will find the power to require abstention from certain acts, such as engaging in journalism, distributing leaflets or attending meetings. Well, in the Bill as it was originally introduced, we followed the recommendation as closely as we could. The matter was discussed, if my memory serves me right, in the Select Committee when we decided, after careful consideration, to limit this power to acts which are calculated to disturb the public peace or to be prejudicial to the public safety.

The Hon'ble Rao Bahadur B. N. Sarma :—" May I rise to a point of order, my Lord ? The discussions in Select Committee are sometimes utilised by way of argument to tell us that the whole question has been discussed in Select Committee while objection is taken at other times. But I take it that what happens in the Select Committee, unless it appears in the report of the Select Committee, must be treated as confidential ? "

The Hon'ble Sir William Vincent :—" If I have erred against the rules, I can only express my regret, but I only want to draw attention to the changes in the Bill made in Select Committee. And the reason for my making the statement was that I was a little surprised by the Hon'ble Mr. Patel's suggestion that I was certain to accept this amendment. The position is this. If it is found that revolutionary movements are being promoted and such movements are likely to lead to the commission of scheduled offences, and that a particular person is actively engaged in these movements, the Government may think it necessary to prohibit him from specific acts—no general or vague order is allowed—likely to disturb the public peace or endanger the public safety. I submit to the Council that this is not an unreasonable power for the Local Government to have in the circumstances."

The Hon'ble Mr. V. J. Patel :—" Your Excellency, I did say I was confident the Hon'ble the Home Member would accept this amendment, because I hear it suggested so often that the intention of the Government in enacting this law is to deal with revolutionary and anarchical movements only. Therefore, I was inclined to think that the amendment would find favour with my Hon'ble friend the Home Member. If the clause is left as it stands, people will be justified in drawing their own inferences."

The motion was put and negatived.

3-29 P.M. **The Hon'ble Rao Bahadur B. N. Sarma** :—" My Lord, I beg to move—

'That in clause 21 (*2*) for the words 'may also' the word 'shall' be substituted, and after the word 'effect' the word 'only' be inserted.'

"The clause will then run thus :—

'Any order under clauses (*b*) to (*e*) shall be made to take effect only upon default by the person concerned in complying with an order under clause (*a*).'

" What I want, my Lord, is that the accused person should be given a chance of giving security for his good conduct, and that the other clauses should be made to take effect only if he fails to execute a bond, with or without sureties, of such amount as may be prescribed. I think it is a very reasonable

request that the man shall not be harassed by being asked to notify his residence, to go to a police-station and so on, if he can furnish security to the authorities that he will keep the peace and be of good behaviour."

The Hon'ble Sir William Vincent:—"My Lord, I think the Hon'ble Member is somewhat in error in stating that the Bill provides for security being taken to keep the peace and be of good behaviour. If I recollect rightly, the undertaking in these cases is not to commit particular offences. The words relating to a bond for general good behaviour were specifically deleted by the Select Committee and the Hon'ble Member is in error in thinking that the bond can be required in those terms. I think he will agree also that taking a bond alone not to commit certain offences is an insufficient precaution in the case of a determined evil-minded person. As a matter of fact, we have now, I am glad to say, taken security either in the shape of personal bonds or in some cases with security as well, from many young men who have been reformed up to a certain point, and many of them are now working and earning their living under very much better conditions. But it is one of the mildest forms of restraint imposed. In certain cases, where men are of a more dangerous character, we have, either in addition or in substitution of that, to subject them to some of the other restrictions which are named in the clause, and which can also be imposed on these men under the Defence of India Rules. The particular restriction which he suggests is often the last minor restriction imposed before a man is altogether released. We take a personal bond from him for his good behaviour, and as soon as he has been of good behaviour for a short time, we remove that and let him go altogether." 3-30 P.M.

The Hon'ble Rao Bahadur B. N. Sarma:—"The only point is, inasmuch as you will be asking the person concerned to give a bond not to commit, or attempt or conspire to commit, or abet the commitment of, the offences described in the Schedule, that will be practically tantamount to asking him to keep the peace and be of good behaviour. There may be a few other offences not strictly falling within the section, but the main point is secured."

The motion was put and negatived.

The motion that clause 21 of the Bill, as amended by the Select Committee, and as further amended, stand part of the Bill was put and agreed to.

His Excellency the President:—"I must rule No. 96,* Mr. Shukul's amendment, out of order. It is open to Mr. Shukul to take the negative on every one of these clauses which will be put separately."

*That in Part II, clauses 22 to 31 be deleted.

The Hon'ble Rai Bahadur B. D. Shukul:—"I do not desire to move the amendment, my Lord."

The Hon'ble Sir William Vincent:—"My Lord, I move that clause 22 stand part of the Bill."

The motion was put and agreed to.

The Hon'ble Sir William Vincent:—"My Lord, I move that clause 23 of the Bill, as amended by the Select Committee, stand as part of the Bill."

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, with regard to my next amendment— 3-35 P.M.

'That in clause 23, the words 'a copy of' and the words 'by or under the general or special authority of the Local Government' be deleted, and after the word 'all' the word 'lawful' be inserted.'

The Council not having accepted my amendment as regards clause 21, the former part of this amendment falls to the ground, so it will have to be deleted, and I only move the last portion :— 405

'That after the word 'all' the word 'lawful' be inserted.'

"I do not know whether the Hon'ble the Home Member will accept it. The clause as it stands says 'all means necessary to enforce compliance with the same.'

"It might include, my Lord, a constable using a baton or *lathi* as soon as he is required to carry out the order; that could not be meant, and I think it is better to make it clear. Therefore, I move that the word 'lawful' be used with the word 'all', so that you may use all lawful means necessary to enforce compliance with the order."

3-36 P.M. **The Hon'ble Sir George Lowndes**:—"My Lord, it might be convenient if Mr. Patel's amendment were taken along with this. I am prepared to agree to the insertion of the word 'reasonable' before 'necessary', which I think will really meet my Hon'ble friend."

The Hon'ble Mr. Kamini Kumar Chanda:—"Yes."

The Hon'ble Mr. V. J. Patel:—"I move my amendment, my Lord, that in clause 23 for the words 'use all means necessary,' the words 'use all lawful means reasonably necessary' be substituted."

The Hon'ble Sir George Lowndes:—"I hope my Hon'ble friend understood that I cannot accept the word 'lawful'; but I am quite willing to accept the word 'reasonable' before 'necessary.'"

His Excellency the President:—"Do you withdraw your amendment, Mr. Chanda?"

The Hon'ble Mr. Kamini Kumar Chanda:—"Yes."

His Excellency the President:—"Are you willing to accept?"

The Hon'ble Mr. V. J. Patel:—"I am not willing to accept the amendment suggested."

The Hon'ble Mr. Patel's motion was put and negatived.

The Hon'ble Sir George Lowndes:—"I move, my Lord, that after the words 'all means' the word 'reasonably' be inserted."

The motion was put and agreed to.

The motion that clause 23 as amended by the Select Committee and as further amended stand part of the Bill was put and agreed to.

The Hon'ble Sir William Vincent:—"I move that clause 24 do stand part of the Bill."

The Hon'ble Mr. Kamini Kumar Chanda:—"I beg to move, my Lord, that clause 24 be deleted."

The Hon'ble Sir George Lowndes:—"If this is amendment 99, I submit that it is out of order."

The motion that clause 24 stand part of the Bill was put and agreed to.

The Hon'ble Sir William Vincent:—"My Lord, I move that clause 25 as amended by the Select Committee do stand part of the Bill."

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I move this amendment to clause 25—

'That for clause 25 the following clause be substituted . . .

"I do not know, my Lord, if it is allowed in consequence of my amendment as regards clause 21 being rejected because this will stand only if that has been accepted. I think, however, this will, under the circumstances, stand."

His Excellency the President:—"Is this a corollary to Mr. Chanda's amendment on clause 21(1)?"

The Hon'ble Sir George Lowndes:—"I do not think it can stand, my Lord, if the other was not there."

The Hon'ble Mr. Kamini Kumar Chanda:—"I think it can go in with the clause as it stands; there is no harm; if you pass the order then this procedure will be adopted. I think it can go in; it is not out of order. I beg to move— 3-39 P.M.

'That for clause 25 the following clause be substituted:—

'25. (1) On the day fixed for showing cause by the person in respect of whom an order under section 21 has been passed the investigating authority shall inquire into the matter and shall follow the procedure, as early as practicable, that is prescribed for trials in summons cases excepting that instead of convicting or acquitting the person proceeded against it shall record its conclusions as to whether it is established to its satisfaction that such person is or has been actively concerned in any movement of the nature referred to in section 20, and if so, what in its opinion would be a proper order to pass against him. The investigating authority shall submit their report to the Local Government and direct the said person to appear on a date fixed before such officer as the Local Government directs.

'(2) The Local Government on receipt of the report of the investigating authority shall after reciting its findings either discharge him if the finding is in his favour, or if the finding is against him, pass an order directing him to carry out the direction contained in clause (*a*) or any one of clauses (*b*) to (*e*) of section 21.

'(3) Any order under clauses (*b*) to (*e*) of section 21 may be made to take effect upon default by the person concerned:

'Provided that if the investigating authority is not satisfied that the person is or has been actively concerned in such area in any movement referred to in section 20 he shall be at once discharged.

'(4) The inquiry shall be held in public, provided that the investigating authority may direct that any portion of the proceedings be *in camera*.'

"My Lord, I do not wish to make any speech on this."

The Hon'ble Sir William Vincent:—"My Lord, I think that if I had not been somewhat familiar with the details of this Bill I should have had some difficulty in following exactly the meaning of this amendment. I think that any one who heard it as put forward now by the Hon'ble Member must have found it difficult to follow. But in any case as the amendment is really consequential to one which has been rejected by this Council, it is quite impossible to accept it. The very first words say 'on the day fixed for showing cause by the person'; well, no day has been fixed and the whole of this clause must necessarily go." 3-41 P.M.

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I do not know if the Hon'ble the Home Member is quite correct, because you ask him to show cause before the investigating authority. Well, the date is immaterial; you have called on him to show cause and I only prescribe the procedure that is to be adopted by the investigating authority when the inquiry is made; that is all I say; the other things are very immaterial. The day is very immaterial; the only thing is that this procedure should be adopted in place of the one which you have prescribed."

His Excellency the President:—"Don't you think you had better withdraw it? There is some considerable doubt about it."

The Hon'ble Mr. Kamini Kumar Chanda:—"I prefer to take my chance, my Lord." 407

The motion was put and negatived.

3-42 P.M. **The Hon'ble Rao Bahadur B. N. Sarma:**—"My Lord, I beg to move my amendment which is as follows:—

'That in clause 25 (1) after the words 'as may be' the words 'and before the expity of seven days from the making of the order' be inserted.'

"I move this amendment so that the man may know where he stands. I assume that the order should be passed within seven days. This is a small matter, but this along with others shows my anxiety that the investigation should be completed as soon as possible and that it may not be extended unnecessarily. Supposing there is a delay and the order is sent 24 or 25 days after it was made, there will have to be an extension of the period laid down, and it may in similar ways be extended indefinitely. This is a small matter but I leave it to the Government and hope it will be accepted."

The Hon'ble Sir William Vincent:—"Clause 21 of the Bill says 'When the Local Government makes an order under section 21 such Government shall as soon as may be' etc. I should have been glad if I could accept the proposal to place a specific limit of time such as is proposed, but the Hon'ble Member will no doubt appreciate the conditions and see that this reference may take a good deal of time. Local Governments have to get letters deciphered which is very difficult and troublesome; it is well known that the revolutionaries carry on their correspondence in cipher, besides which their statements have to be verified, their antecedents and other material has to be collected from different parts of India. The Hon'ble Member shakes his head "

The Hon'ble Rao Bahadur B. N. Sarma:—"I was merely referring to the order already passed."

The Hon'ble Sir William Vincent:—"We cannot always get the full information in seven days. We intend to do this as soon as may be, but we cannot guarantee that it will be done within seven days."

The Hon'ble Rao Bahadur B. N. Sarma:—"I beg to with draw my amendment."

The motion was by leave withdrawn.

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I beg to move my amendment which runs as follows:—

'That to clause 25 (1) the following provisos be added:—

'Provided that the investigating authority shall have the power either of its own motion or on application by the person proceeded against to direct the production of any person whose statement or information may be included in the grounds of action taken by Government as aforesaid; and on the appearance of such person he shall if required by the person proceeded against be put on oath and cross-examined:

'Provided further that if such person does not appear as directed the information or statement made by him will be excluded.' "

The Hon'ble Sir William Vincent:—"I think it would simplify matters if I read to the Council a part of the report by Messrs. Chandavarkar and Beachcroft on the case of the internees that they examined. From that it will be seen that the course proposed by the Hon'ble Member is really impossible. We know that directly the name of an informer is known his life is forfeit. It will be seen from the Report that there are several cases of murder, assassination and attempts on their lives directly it was known that an informer had come to give Government assistance. Messrs. Chandavarkar and Beachcroft say on the subject 'the records before us conclusively prove that the revolutionary organisations are secret conspiracies which have spread into different parts of the province, entered homes, schools and colleges and have reduced their secrecy of operations almost to scientific methods. They have pledged their members to the closest secrecy of their movements on pain of instant death by murder in the event of disclosure; that is one of their rules and every attempt has been made to give effect to it.' The same Commissioners go on to describe the state of terrorism which is created by this state of

affairs by quoting a statement of an actual internee as follows 'there are many members who are members against their will and seek some escape from the bonds of the Samiti. They see no prospect. If they disobey the Samiti they will be shot.' These are the men that the Hon'ble Member seeks to produce for cross-examination by one of the revolutionaries. I do not think that Members of this Council can possibly support that, unless they wish to sacrifice the lives of those who are willing to support the Government. It has been said these men are all spies and informers, they are not; some are men who are assisting the Government; others are young men who have been misled into crime by the revolutionaries. An indication of the methods brought to bear is given in the Rowlatt Committee's report which I quote. The extract is part of a letter from one revolutionary to another. It runs as follows :—

'You should first win over by sweet words the boy of your place about whose character you have written and keep him neutral and if he proves a particular source of harm, extreme measures should be adopted in his case so as to leave no clue.'

"I think words like that speak for themselves. They are grim evidence of desperate treachery and intent to murder. In the circumstances, I hope that the Hon'ble Member will not press this amendment."

The Hon'ble Mr. Kamini Kumar Chanda:—"I fully appreciate the difficulty of the Hon'ble the Home Member, but what about the converse case. Supposing you have an informer who is a liar and is drawing on his imagination. This was the case when Rakhal Naha the informer in the Midnapore bomb case tried to swear away the lives and liberties of a large number of innocent persons when proceedings were taken against 153 persons including the leading gentlemen of the town. They were kept in confinement for days and days, then what happened? As soon as the man was put into the witness-box he had to admit that the whole thing was a myth. Lord Sinha, who was the prosecutor, withdrew the proceedings against the accused and obtained sanction to prosecute Rakhal for perjury. So it is necessary to provide for cases of that kind."

The motion was put and negatived.

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I beg to move my amendment which runs as follows :— 3-53 P.M.

'That in clause 25 (2) the words '*in camera*' and the words 'at some stage of its proceedings' be deleted, and that the words 'personally or by pleader' be inserted after the words 'before it.'"

"I submit that the accused should be permitted to have the assistance of a pleader, seeing that the proceedings against him affect his liberty. Many men will lose their heads if they have to go through the matter unaided by a lawyer. My Lord, I should like to place before the Council the remarks of Lord Morley in Volume II of his 'Recollections'. He says in it at page 257: 'You say that great executive officers never like to trust the lawyers, I will tell you why it is, it is because they do not like or trust law' In this connection there is one thing that strikes me, and it is this, that once a man ceases to be an official his words go for nothing.

"The Hon'ble the Home Member said these are the words of Sir Narayan Chandavarkar, but what about the same Chandavarkar who wrote articles in the *Times of India*, simply because he is no longer an official, his words count for nothing. It seems to me, my Lord, that as soon as individuals cease to be officials their opinions have little value to the Government. I do not see any reason why an accused should be deprived of the help of a lawyer. The only point I have heard is that there are many confidential matters which are likely to leak out if lawyers are allowed to assist the accused. Why do you think so? Have you not tried bomb cases with the help of lawyers, and can you give any instance in which confidential matters have leaked out by the lawyers concerned by divulging the secrets of bomb-making process? Why do you assume it? Of course, you may place any restrictions you think necessary to guard against confidential matters going out. Why do you think on purely imaginary grounds that the lawyers concerned will help leaking out of

confidential matters? I submit, my Lord, you should not deprive an accused of the services of a lawyer without whom he cannot defend himself, and I submit that the accused ought to be allowed the services of a lawyer."

The Hon'ble Mr. G. S. Khaparde:—"My Lord, I have an amendment almost to the same effect. It is No. 106. I shall move it, if your Excellency will permit me to do so."

His Excellency the President:—"Yes."

3-59 P.M. **The Hon'ble Mr. G. S. Khaparde:**—"The amendment that stands in my name is this:—

'That in clause 25 (2) the words '*in camera*' be deleted, for the word 'some' the word 'all' be substituted, and after the words 'in question' the words 'and his legal adviser' be inserted'.

"My reason for proposing this amendment is that the section directs that the investigating authority shall hold an inquiry *in camera*. What I desire to achieve by this amendment is, some discretion should be left to the investigating authority, that is to say, if they think that there are no matters in the inquiry which need be kept secret or confidential, then there is nothing to be gained by holding the inquiry *in camera*. I would leave the discretion to the investigating authority whether they should hold the inquiry *in camera* or not. I suppose somebody on behalf of Government will tell the investigating authority what matters are likely to come before them, and if there are matters in an inquiry which really require to be kept confidential, I have no doubt they will comply with the instructions of Government. But in other cases nothing will be gained in holding the inquiry *in camera*.

"Another thing that I do not understand is if the inquiry can be called an investigation at all. Because in an investigation the person charged usually knows what is going on, and I think his presence will always be useful.

"Now with regard to the assistance of a legal adviser to an accused, I quite agree with Mr. Chanda that the person involved in a criminal case of this kind would require to be advised by a professional lawyer, by a solicitor or a pleader, and to deprive a man of the help of a lawyer in a matter of this kind would practically mean no justice at all, because most of these people would not understand what is going on. In these circumstances, I also put forward my amendment under the same heading as Mr. Chanda's so that I may not have to speak again on it."

4 P.M. **The Hon'ble Mr. V. J. Patel:**—"My Lord, I have an amendment No. 105 which is similar to the first part of my Hon'ble friend Mr. Chanda's amendment, though I must say it is less ambitious than the one moved by my friend Mr. Khaparde. It reads thus:—

'That in clause 25 (2) for the words '*in camera*' the following words be substituted:—

'Which may be *in camera* if such authority for reasons to be recorded in writing so decides'.'

"Both my Hon'ble friends Mr. Chanda and Mr. Khaparde want to drop the words *in camera*. I say that I don't want these words to be dropped altogether. I would suggest that we should put in the words 'which may be *in camera* if such authority for reasons to be recorded in writing so decides'."

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I withdraw my amendment and accept this amendment in place of mine."

The Hon'ble Mr. V. J. Patel:—"The Hon'ble Mr. Shafi has an amendment No. 103, on the same lines as mine which suggests the insertion of the words 'which may in its discretion, be in whole or in part'. What I want really is that discretion must be left to the investigating authority to decide whether under certain circumstances the investigation should be held *in*

camera or not. The clause as it stands leaves no discretion. It makes it imperative on the part of the investigating authority to hold every inquiry, every part of it, in fact all inquiries *in camera* and in no other way. That being so, I respectfully submit that if this inquiry, this investigation I should call it, is to have any significance, if it is to be really an inquiry of any usefulness. I submit some room should be left to the discretion of the person who presides over that inquiry.

"Similarly with regard to the question of a pleader. I am afraid I have got somewhere a similar amendment; it may be a long way off. But the question really is, whether these safeguards are to be of any use to the person concerned or not. That is the main question which this Council has to decide. If you are not going to allow the accused person to take advantage in any substantial form of the safeguards, then by all means do not allow a pleader, let the investigation be *in camera*, and you can do what you like."

The Hon'ble Khan Bahadur Mian Muhammad Shafi :— 4-4 P.M.
"My Lord, I am exceedingly sorry I was not in the Council Chamber when my amendment No. 103 was reached, but as the amendment No. 105 which stands in the name of my Hon'ble friend Mr. Patel is in effect the same as mine, with Your Excellency's permission I wish to say a few words in regard to my amendment. My amendment reads thus :—

'That in clause 25 (*2*) after the word 'inquiry' the following words be inserted :—

'which may, in its discretion, be in whole or in part'.'

"My Lord, the object which I have in view in placing this amendment before the Council is to remove an avoidable and unnecessary suspicion as well as criticism against this Bill. I recognise that there may be cases in which it may be necessary to hold the inquiry *in camera*. But there may also be cases in which it will not be necessary for the investigating authority to hold the inquiry in secret in the manner contemplated. Therefore, it does not appear to me to be necessary that the Statute should lay down in imperative terms that every inquiry shall be held *in camera*. I think, if I may venture to suggest, it is advisable that discretion should be left to the investigating authority to hold the inquiry *in camera* if the circumstances and the necessities of the case so require. And that it should be left open to the authority to hold the inquiry in open court if the case is of an ordinary kind in which an inquiry *in camera* is not necessary."

The Hon'ble Dr. Tej Bahadur Sapru :— "My Lord, with 4-5 P.M.
regard to the question of the inquiry being held *in camera*, I wish to submit that either you have confidence in the investigating authority you yourself appoint or you have not. If you have confidence in the investigating authority you appoint you may depend upon it that if it considers that it is in the public interest necessary that an inquiry should be held *in camera* it will do so. Even at the present moment judges who are not under that statutory obligation can exercise that right whenever they think that any part of an inquiry requires to be conducted *in camera*. My Lord, it is of the very essence of inquiries that there should be publicity about them. But it may be urged that this is not a judicial inquiry. Well I recognise that it is not a judicial inquiry, I deplore that it is not a judicial inquiry, and that makes it all the more imperative that you should have nothing like a provision for secrecy in the Statute. You, in the first instance, dispense with the ordinary judicial form and then you make the law worse by practically directing the investigating authority that every part of the inquiry should be held *in camera*. My Lord, I should like some Members to imagine their position if they were called before a judge, howsoever patient and howsoever fair he might be, if they knew that in that room there would be no one else excepting themselves and the judge. I know, my Lord, from daily experience that even the most innocent men feel very nervous when they suddenly find themselves face to face with a judge. I can quite imagine, my Lord, a man finding himself in that position absolutely getting nervous, and many things may happen there, my Lord, for which

publicity is the only cure. I think the amendments of my friends Mr. Patel and Mr. Shafi are so reasonable that there should be no objection to accepting them, more particularly when they ask that discretion should be given to the investigating authority to decide for itself whether the inquiry should be held *in camera* or not."

4-8 P.M. **The Hon'ble Rao Bahadur B. N. Sarma:**—"My Lord, I have a similar amendment, namely No. 119:—

'An enquiry under this section may, at the discretion of the investigating authority, be held in whole or in part *in camera*, and the provisions of section 11 shall, so far as may be, be applicable to such proceedings.'

Section 11 reads thus:—

'The Court, if it is of opinion that such a course is necessary in the public interest or for the protection of a witness, may prohibit or restrict in such way as it may direct the publication or disclosure of its proceedings or any part of its proceedings.'

"I submit that the provisions of section 11, together with the suggestion I have made, would amply meet the requirements, and I do not think it is necessary to enlarge upon the point."

4-9 P.M. **The Hon'ble Sir George Lowndes:**—"My Lord, I have so much respect for the opinions of my Hon'ble friend Dr. Sapru that I am unable to let an opinion which he has just expressed go by unanswered. He said it is much worse for a person to appear privately before an inquiring authority than to appear before him in open court. I can only say that my whole experience in the practice of my profession is exactly the contrary. The usual practice is for judges to retire to their chambers to see persons who it is supposed would be nervous before them in court. It is for that reason that the practice is for the judge to have children brought to him in chambers when there is a case affecting children, lunatics brought to him when there is a question affecting the lunacy of a person, ladies brought when there is a question which it is not desired to discuss in the court. It is a very well known principle. It is much easier for nervous people to sit down in the private room of a judge and talk quietly to him than in an open court."

The Hon'ble Dr. Tej Bahadur Sapru:—"But not persons accused of heinous offences."

4-10 P.M. **The Hon'ble Sir William Vincent:**—"My Lord, the amendment with which I have to deal is whether the investigating authority should have power to decide whether the inquiry is to be held *in camera* or not. I can assure Hon'ble Members that I should be very glad to meet them on this matter if I thought it was possible to do so I want them to consider what the position of Government is. If I cite again a quotation from Messrs. Beachcroft and Chandravarkar's report I may be held up to criticism because I have failed to cite a more recent opinion of Sir Narayan. I may say, however, that I quote his views on facts, not on policy. But taking the Rowlatt Report again you find the same arguments used there. I will read the following:—

'It is common knowledge that many assassinations, murders and bomb-throwing outrages have taken place and are still taking place, and that the victims have generally been persons assisting in Crown prosecutions; for instance inquiring officers and approvers.'

"That is a citation I think from a judgment.

"Then I may cite the case of a man called Murari Mohun Mitter whose son was an important witness in a case and who himself gave assistance to the police, and was very shortly afterwards murdered. I think I have told the Council on previous occasions also that much of the information given by these men is, by reason of the terror in which they are, given on the solemn undertaking that it shall not be made public. I admit of course that information given on that condition has not the same value as information which can be made public, but it is really the only way in which information of these revolutionary crimes can be obtained in the face of the circumstances to which I

have alluded more than once before. Messrs. Chandravarkar and Beachcroft in their inquiry say in regard to procedure:—

'In these circumstances it is impossible to secure a fair trial by the procedure of the Evidence Act and Criminal Procedure Code which is appropriate only to normal conditions.

'The procedure to deal with revolutionary crime has to be practical in the sense of being appropriate to its special conditions so as to secure as fair a trial as is feasible under the exceptional situation. Our special procedure cannot therefore be regarded as violating the primary principle on which those laws are based.'

"The Government, having undertaken not to divulge many of these statements, it is obvious that the course which is now proposed would make it necessary for Government either not to produce the whole of its evidence before the tribunal or, in the alternative, commit a breach of faith.

"I want also the Council to remember this. I hope perhaps later on to accept an amendment as to the constitution of the investigating authority so as to place that body in a position entirely apart from the Government. It will have nothing whatever to do with the administration. A body like that cannot possibly know what the dangers of the situation are, what forces are at work under the surface, or the undertakings on which information has been given, and I submit that the modification, if I were to accept it in this form, might prevent the Government putting before a tribunal the whole of the information at its disposal, because we could not run the risk of that information being published. If therefore the investigating authority is to have the full information of Government before them, then the proceedings must be *in camera*.

"If the proceedings are not so held we are at once faced with the question of an open trial, which we really know to be hopeless."

The Hon'ble Mr. V. J. Patel:—"The second part remains unanswered."

His Excellency the President:—"I think, Mr. Chanda, you fathered Mr. Patel's amendment."

The Hon'ble Mr. Kamini Kumar Chanda:—"I accepted his amendment in regard to the first part of my amendment. 4-15 P.M.

"My Lord, I respectfully submit that the reply which the Hon'ble the Home Member has given is not complete. Now I say, why do you not repose trust in the investigating authority? The Hon'ble the Home Member has said there are matters which ought not to be divulged. Well, if that is so, and you state the case to the investigating authority, why do you assume that it would not exercise a proper discretion and withhold from the public such matters as ought not to be divulged. Why fetter the discretion of the investigating authority? That is my submission.

"With regard to the statements in the report of Sir Narayan Chandravarkar and Mr. Justice Beachcroft, I ask what about the converse proposition? What about the case of an informer who does not come before the investigating authority, who is not cross-examined, who is not placed on oath? How is the statement which he makes to be sifted? The Hon'ble the Home Member says that non-officials will be associated with the inquiry. How would that help the matter? How can anybody, official or non-official, find out by merely reading the statement of a man who is not before him, who is not cross-examined, who does not take an oath, whether he is speaking the truth or a falsehood?

"Then I find the Hon'ble the Home Member has not said anything about the second part of my amendment regarding representation by a lawyer. Well, I will assume that silence amounts to consent, my Lord."

His Excellency the President:—"The question is that in clause 25 (*2*) for the words '*in camera*' the following words be substituted 'which may be *in camera* if such authority for reasons to be recorded in writing so decides,' and the words 'at some stage of its proceedings' be deleted and the words 'personally or by pleader' be inserted after the words 'before it.'"

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The Hon'ble Mr. V. J. Patel:—"Will your Excellency put these two parts separately?"

His Excellency the President:—"I am putting Mr. Chanda's amendment. Mr. Chanda has accepted your part and I put it on to him."

The Hon'ble Mr. Kamini Kumar Chanda:—"My amendment is in three parts, may each part be put separately?"

His Excellency the President:—"I cannot make three out of it. I will put the whole of yours first."

The Hon'ble Mr. Chanda's amendment* was put and negatived.

His Excellency the President:—"I will put yours separately, Mr. Patel. I hope that satisfies you."

The Hon'ble Mr. Patel's amendment † was then put and the Council divided as follows:—

Ayes—17.	*Noes—33.*
The Hon'ble Mr. S. N. Banerjea.	The Hon'ble Sir Claude Hill.
Raja of Mahmudabad.	George Lowndes.
Dr. T. B. Sapru.	Thomas Holland.
Pandit Madan Mohan Malaviya.	William Vincent.
Mr. S. Sastri.	„ James Meston.
„ B. N. Sarma.	„ Arthur Anderson.
Mir Asad Ali, Khan Bahadur.	„ Gangadhar Chitnavis.
„ Sir Dinshaw Wacha.	Mr. W. A. Ironside.
Mr. V. J. Patel.	Sir Verney Lovett.
Rai Sitanath Ray Bahadur.	Mr. H. F. Howard.
Maharaja Sir M. C. Nandi.	Sir James DuBoulay.
Rai Krishna Sahay Bahadur.	Mr. A. H. Ley.
Khan Bahadur Mian Muhammad Shafi.	W. M. Hailey.
Sardar Sundar Singh.	H. Sharp.
Mr. G. S. Khaparde.	„ R. A. Mant.
Rai B. D. Shukul Bahadur.	Maj.-Genl. Sir Alfred Bingley.
„ Mr. K. K. Chanda.	Sir Godfrey Fell.
	Mr. F. C. Rose.
	C. H. Kesteven.
	„ D. deS. Bray.
	Lieut.-Col. R. E. Holland.
	Surg.-Genl. W. R. Edwards.
	Mr. H. Moncrieff Smith.
	C. A. Barron.
	„ P. L. Moore.
	„ „ T. Emerson.
	„ E. H. C. Walsh.
	„ C. A. Kincaid.
	Sir John Donald.
	Mr. P. J. Fagan.
	„ J. T. Marten.
	„ W. J. Reid.
	„ „ W. F. Rice.

The amendment was therefore negatived.

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* 'That in clause 25(2) the words '*in camera*' and the words 'at some stage of its proceedings' be deleted and the words 'personally or by pleader' be inserted after the words 'before it.'

† That in clause 25(2) for the words '*in camera*' the following words be substituted:—
'which may be *in camera* if such authority for reasons to be recorded in writing so decides.'

The Hon'ble Rao Bahadur B. N. Sarma:—"I think your Lordship may get No. 119 also negatived:— 4-26 P.M.

'That at the end of clause 25 (2) the following be inserted:—

'An inquiry under this section may, at the discretion of the investigating authority, be held in whole or in part *in camera* and the provisions of section 11 shall, so far as may be, be applicable to such proceedings.'

The motion was put and negatived.

The Hon'ble Mr. G. S. Khaparde:—My Lord, I withdraw my amendment.

'That in clause 25 (2) the words '*in camera*' be deleted, for the word 'some' the word 'all' be substituted, and after the words 'in question' the words 'and his legal adviser' be inserted.'

The amendment was by leave withdrawn.

The Hon'ble Rao Bahadur B. N. Sarma:—"My Lord, I beg to move—

'That in clause 25(2) the words '*in camera*' be deleted and after the words 'against him' the words 'and the nature of the evidence in so far as it may be disclosed' be inserted, and after the words 'have to offer' the words 'the evidence he may tender' be inserted.'

The clause would read thus:—

'Such authority shall in every case allow the person in question a reasonable opportunity of appearing before it at some stage in its proceedings and shall, if he so appears, explain to him the nature of the charge made against him and the nature of the evidence in so far as it may be disclosed and shall hear any explanation he may have to offer and the evidence he may tender, and shall make such further investigation (if any) as appears to such authority to be relevant and reasonable.'

"What I ask is that the investigating authority shall tell the accused person not merely the nature of the charge against him, but also the nature of the evidence against him, in so far as it may be disclosed without peril to the State

The Hon'ble Sir George Lowndes:—"The Hon'ble Member never said that."

The Hon'ble Rao Bahadur B. N. Sarma:—"I said it. The object is this. It is no use your simply telling him he spoke particular words in a particular place—that that is the charge. There must be also some sort of disclosure of the nature of the evidence, namely, he was seen and heard saying so, by such and such a person at such and such a place; so that he may have the opportunity of adducing evidence to show that he was or was not there. Not merely the nature of the charge, but the nature of the evidence should be disclosed to the accused person. It would be only fair that this should be done.

"And then I say that any explanation he may have to offer should be taken and also the evidence he may tender. It may be said that that may lengthen the trial unnecessarily. My answer is that even under the Criminal Procedure Code witnesses may be dispensed with if the object be considered by the authority to be merely for the purpose of securing delay or defeating the ends of justice; and I submit that in an inquiry of this sort the discretion would be more rigorously exercised against the accused person, and consequently there would be no harm whatsoever in providing that at the discretion of the authority the evidence tendered by the accused should be taken. If after taking such evidence, any further investigation appears to be necessary, the investigating authority may hold it. I therefore submit that the amendments that I seek to have the Council adopt are of an extremely reasonable character, and I hope the Government will be able to accept them."

The Hon'ble Khan Bahadur Mian Muhammad Shafi:— 4-28 P.M.
"My Lord, it will be seen that my Hon'ble friend's amendment consists really of two parts. In the second part of his amendment he proposes that the words 'the evidence he may tender' be inserted after the words 'have to offer'. Now, with regard to this part of his amendment, your Lordship will notice

that there are other amendments—Nos. 109 to 112—which cover the same point. So if your Lordship will accept my suggestion that the two parts shall be put separately, then the Hon'ble Members who have proposed amendments Nos. 109, 110, 111 and 112, may now address the Council on their own amendments and the proceedings will be considerably abridged."

His Excellency the President :—"All right, Mr. Shafi."

The Hon'ble Khan Bahadur Mian Muhammad Shafi :—"I have an amendment also, my Lord :

'That in sub-clause (2) of clause 25, after the word 'offer' the words 'and take any evidence he may have to adduce in his defence' be inserted.'

"I should like to add only a few words to what has fallen from the lips of my Hon'ble friend Mr. Sarma. Your Lordship has seen that in clause 25, sub-clause (2) the following procedure is laid down :

'The investigating authority shall then hold an inquiry *in camera* for the purpose of ascertaining what, in its opinion, having regard to the facts and circumstances adduced by the Government, appears against the person in respect of whom the order has been made. Such authority '—

this is the relevant portion—

'Such authority shall in every case allow the person in question a reasonable opportunity of appearing before it at some stage in its proceedings and shall, if he so appears, explain to him the nature of the charge made against him and shall hear any explanation he may have to offer, and shall make such further investigation (if any) as appears to such authority to be relevant and reasonable.'

That is to say, the sub-clause, as it now stands, provides that the authority shall explain the charge to the person concerned and shall take down whatever explanation he has to offer and make any further investigation that the authority itself may think necessary. This does not give any right to the person concerned to produce evidence in his defence. Now as the investigating authority has all the materials which may be in the possession of the Government before it, that is to say, has read all the evidence which the Government have placed before the investigating authority, if the clause were to remain as it now stands it would result in this, that the inquiry would be practically *ex parte*, unless the investigating authority in its discretion think fit to direct further inquiry after the person concerned has made his explanation. That is not fair play. I submit that the person who is called upon to give an explanation ought to have an opportunity of adducing in his own defence such evidence as he may wish to produce. As has been pointed out by the Hon'ble Mr. Sarma, the Criminal Procedure Code already includes ample power, gives ample power, to the authority to exclude such evidence as they think is intended merely to waste their time and is not necessary to the case. It seems to me that in fairness to the person who is called upon to plead to the charge which has been brought against him he ought to be given an opportunity of adducing evidence."

4-45 P.M. **The Hon'ble Mr. V. J. Patel** :—"Please, your Excellency, on this question I have got two amendments : one is No. 110 and the other is No. 112. No. 110 reads thus :—

'That in clause 25 (2) after the words 'he may have to offer' the words 'examine any witnesses he may produce' be inserted.'

My amendment No. 112 is—

'That in clause 25 (2) after the words 'relevant and reasonable' the following proviso be inserted :—

"Provided that the investigating authority shall, if the person in question applies to him for process to compel the attendance of any witness or the production of any document or thing, issue such process, unless for reasons to be recorded he deems it unnecessary to do so and for this purpose, such authority shall have all the powers conferred by the Code on a Court.'

"The point, my Lord, is this. You can imagine cases in which it will not be possible for the person concerned to produce his witnesses, because under clause 21 he will be, at the time when the investigation takes place, under some order of externment or internment, and therefore it will not be

possible for him to go to his place or the place where the witnesses are and produce them before the investigating authority. If he produces them, it is all right. There are many cases in which he can so produce them, because it is not always that the Local Government may pass orders of externment or internment. They may be satisfied—although there is very little hope of this—by asking the man to execute a bond. But if there are other orders passed, it will not be possible for him to produce witnesses; and therefore I say that power should be given to the investigating authority to summon his witnesses if he applies for summonses.

"My Hon'ble friend, the Home Member, remarked in discussing some amendment of my Hon'ble friend, Mr. Chanda, in regard to these witnesses that they would be threatened and this, that and the other. But this does not apply for the defence witnesses; it applies to the prosecution witnesses. Here we are concerned with the accused; and if evidence is offered he should be given an opportunity of calling the witnesses; and if those witnesses cannot be produced, the courts should be empowered to summon those witnesses and examine them. As the section stands at present the investigating authority has no power whatever to summon any witness."

His Excellency the President:—"Mr. Chanda, you have got an amendment on this?"

The Hon'ble Mr. Kamini Kumar Chanda:—"Yes, I beg to move—

'That in clause 25 (3) after the words 'have to offer' the words 'and shall summon such witnesses as he desires to call and examine them' be inserted.'

"I have nothing more to add."

The Hon'ble Rao Bahadur B. N. Sarma:—"Your Lordship will be pleased to put these two separately; the first part relates to the nature of the evidence to be disclosed, and the second part relates to the taking of evidence. I would like the first part to be put first."

The Hon'ble Sir William Vincent:—"My Lord, may I explain .?"

The Hon'ble Mr. V. J. Patel:—"The Hon'ble the Home Member wants to accept some amendment."

The Hon'ble Sir William Vincent:—"Mr. Patel with his usual ingenuity has hit the nail on the head. I am prepared to accept amendment No. 112 of the Hon'ble Member himself with some small changes in the form which the drafting department may recommend."

His Excellency the President:—"Will you tell me how much of Mr. Sarma's amendment that disposes of?"

The Hon'ble Sir William Vincent:—"I object to the use of the word 'witness' because the investigating authority, as has been pointed out, is not a Court of justice or a judicial body; and it seems to me that that word is inappropriate; but Sir George Lowndes has modified the amendment in a way that will, I hope, meet Mr. Sarma."

The Hon'ble Mr. Sarma's motion was put and negatived.

His Excellency the President:—"Are you satisfied, Mr. Shafi?"

The Hon'ble Khan Bahadur Mian Muhammad Shafi:—"Yes, my Lord."

The Hon'ble Mr. V. J. Patel:—"I do not want to press my amendment 112."

The Hon'ble Mr. Kamini Kumar Chanda:—"I do not want to press my amendment 109."

The Hon'ble Mr. V. J. Patel:—"This, your Excellency, is a very simple amendment: I beg to move—

'That in clause 25 (2) for the words 'a reasonable opportunity of appearing before it at some stage,' the words 'to appear before it at every stage' be substituted.'

"I want that this investigation should take place in the presence of the person concerned and not behind his back. That is all I want."

The Hon'ble Sir James DuBoulay:—"Government cannot accept that. The same difficulty occurs as has been referred to before so often. The names of people who give information and of witnesses who come there to

The Hon'ble Mr. V. J. Patel:—"Your Excellency, it is difficult to hear."

The Hon'ble Sir James DuBoulay:—"There must be times in the course of an inquiry when statements are being read by the investigating authorities or persons are being examined before them. It is essential for the protection of the persons who make these statements that their identity should not be given away: and at such times it is therefore impossible to allow the person concerned to be present."

The motion was put and negatived.

The Hon'ble Sir George Lowndes:—"My Lord, I suggest that Mr. Patel's amendment No. 112 might be put as it stands, on the understanding that we are to eliminate the word 'witness' and substitute some expression afterwards which will not suggest a judicial proceeding. I understood, my Lord, that your Excellency stated that there would be an adjournment."

His Excellency the President:—"There will be an adjournment for tea at 5 o'clock."

The Hon'ble Sir George Lowndes:—"That there will be an adjournment to enable us to put all these amendments into shape. If this amendment is accepted, it is understood that we shall redraft it on the lines I have referred to. . .

His Excellency the President:—"There will be an interval somewhere between to-morrow morning and the next time we sit on this Bill during which the Legislative Department will be able to put these things into shape. I will put Mr. Patel's amendment (No. 112) as it stands on that understanding."

The motion was put and agreed to.

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I beg to move that the two provisos to clause 25 (2) be deleted. The provisos are:—

'Provided that the investigating authority shall not disclose to the person whose case is before it any fact the communication of which might endanger the public safety or the safety of any individual:

'Provided further that nothing in this sub-section shall be deemed to entitle the person in question to appear or to be represented before the investigating authority by pleader, nor shall the Local Government be so entitled.'

"My Lord, I move that these two provisos be deleted."

The Hon'ble Sir William Vincent:—"My Lord, I have just read the first proviso to this clause and all it enacts is that the investigating authority shall not disclose to the person whose case is before it any fact the communication of which might endanger the public safety or the safety of any individual. I cannot think that the Hon'ble Member seriously contemplates that the investigating authority should disclose matters which are prejudicial to the public interest or which would really mean the murder of an unfortunate witness. I cannot believe that he really wants that."

The Hon'ble Rao Bahadur B. N. Sarma:—"I also move, my Lord, that the second proviso to clause 25(2) be deleted. I have not heard distinctly what the attitude of Government is with regard to the appointment of a pleader."

The Hon'ble Sir James DuBoulay:—"I am afraid that the attitude of Government is against Mr. Sarma."

The Hon'ble Rao Bahadur B. N. Sarma:—"I think these two Nos. 115 and 118 go out automatically since No. 104 was rejected."

The Hon'ble Mr. Surendra Nath Banerjea:—"My Lord, I beg to move .

His Excellency the President:—"No, no; you had your opportunity on amendment No. 104; this question was discussed then; we are only seeing what progress we have made. The question is that the two provisos to clause 25(2) be deleted."

The motion was put and negatived.

The Hon'ble Mr. V. J. Patel:—"My Lord, I beg to move my amendment which runs as follows:—

'That in the first proviso to clause 25 (2) for the words 'shall not disclose' the words 'may not for the reasons to be recorded in writing disclose' be substituted.'

The proviso will then read as follows:—

'Provided that the investigating authority may not for the reasons to be recorded in writing disclose to the person whose case is before it any fact the communication of which might endanger the public safety or the safety of any individual.'

This will meet, I believe, the criticisms of the Hon'ble the Home Member in regard to Mr. Chanda's amendment which the Council has just rejected. I propose that the investigating authority refuse to disclose to the person concerned any fact which, in its opinion, is likely to endanger the safety of the public or any individual, but in doing so, the authority must record its reasons in writing."

The Hon'ble Sir William Vincent:—"My Lord, I submit there really is no reason to modify the wording of this clause. I have discussed the clause so frequently that I am ashamed of doing so again. It provides that the investigating authority shall not disclose to the person whose case is before it any fact which would endanger the public safety or the safety of any individual, and no benefit would be gained by making the suggested change in the wording. I think it is reasonable that the investigating authority should be under a distinct obligation not to communicate information of this kind to the person whose case is under investigation in the circumstances contemplated." 1119

The Hon'ble Mr. V. J. Patel:—"It is for the Local Government who has to decide the facts to say whether there are any reasons why they

refused to disclose certain facts which would be material to the defence of the accused. That is the main reason why I want the investigating authority to record the reasons for its order refusing to disclose any fact."

The motion was put and negatived.

The Hon'ble Mr. V. J. Patel:—"My Lord, I beg to move my amendment which runs as follows—

'That in the second proviso to clause 25 (2) for the word 'entitle' the word 'debar' and for the word 'entitled' the word 'debarred' be substituted.'

I think it would be a great advantage if both parties were allowed to appear by pleader."

The motion was put and negatived.

The Hon'ble Mr. G. S. Khaparde:—"My Lord, the amendment which I wish to move reads thus—

'That in clause 25(3) the word 'not' be deleted.'

"We all heard yesterday what the Hon'ble the Law Member said, that the Evidence Act and the rules of evidence were instruments of discovering the truth, and anybody who neglects the laws of evidence and the rules of evidence really shuts his eyes to truth or debars himself from discovering it. If that is so, my Lord, I do not understand why the investigating authority should not be content with the law of evidence. Don't they want to know the truth? I believe they do. The appointment requires that they should go into the matter and find out the truth. So I propose that the word 'not' be deleted, and then the sub-section will run as follows: 'subject to the provisions of sub-section (2) the inquiry shall be conducted in such manner as the investigating authority considers best suited to elicit the facts of the case; and in making the inquiry such authority shall be bound to observe the rules of the law of evidence,' and that is the reason why I have suggested this amendment."

His Excellency the President:—"You have got a similar amendment, Mr. Chanda?"

The Hon'ble Mr. Kamini Kumar Chanda:—"I have nothing more to add to what the Hon'ble Mr. Khaparde has said, my Lord."

The motion was put and negatived.

The Hon'ble Mr. C. A. Kincaid:—"I have got to address the Council on this point, my Lord."

His Excellency the President:—"But we are not discussing Mr. Sastri's amendment now."

The Hon'ble Mr. V. J. Patel:—"My Lord, I am afraid I am not in a position to go up to the standard of my Hon'ble friend Mr. Khaparde. My amendment is a moderate one. I will first read it according to the rules. I beg to move that—

'in clause 25(3) for the words 'shall not be bound to observe' the words 'shall as far as possible' be substituted.

The clause will read thus:—

'Subject to the provisions of sub-section (2) the inquiry shall be conducted in such manner as the investigating authority considers best suited to elicit the facts of the case and in making the inquiry such authority shall, as far as possible, follow the rules of the law of evidence.'

"Now, if Hon'ble Members will turn their attention to the amendment that follows and which stands in the name of my Hon'ble friend Mr. Sastri, it also requires what I require, that in clause 25(3) for the words 'shall not' the words 'shall as far as possible' be substituted. We do not by these amendments, your Excellency, ask that the investigating authority shall under all

circumstances be bound to follow the rules of evidence as if it were a court of law; but we say that it should be guided as far as possible by the rules of evidence. It should not be left entirely free to discard the rules of evidence altogether. That is our point, and I trust the Hon'ble the Home Member will at any rate consider this suggestion of ours."

His Excellency the President:—"Mr. Sastri, have you anything to say?"

The Hon'ble Mr. Srinivasa Sastri:—"I have nothing to add, my Lord."

The Hon'ble Mr. C. A. Kincaid:—"My Lord, one is so accus- 4-55 P.M.
tomed to regard the laws of evidence with slavish admiration that it is with almost a feeling of dismay that one hears it said that the rules are generally based on common sense but are also sometimes divorced from common sense, that they sometimes have their origin in true principles and in other times have their origin in historical incidents that belong to so remote a past as to be now forgotten; that they are not immutable laws which never vary but that they change in different countries and in the same countries at different times. Yet this is the proposition which I wish to prove by one or two illustrations. Yesterday, my Lord, I referred to the case of parties giving evidence on their own behalf in civil and criminal cases. The old objection to this practice was based on a fear of the sin of perjury. This no doubt is a sound principle of religion, but it has nothing to do with the principles of evidence. I shall not, however, labour this point as I went into it yesterday at considerable length. My next illustration is a case where an accused person makes a confession to a policeman. In England such a confession is admissible. There was a time in India when such a confession was admissible also. Now it is inadmissible. The reason why it is inadmissible was that it was found that confessions were so often extorted by police torture, that the Legislature thought it advisable to make all confessions to a policeman, unless made in the presence of a Magistrate, inadmissible. Yet, my Lord, many of these excluded confessions are true and voluntary, and to admit a true and voluntary confession is a sound principle of evidence. Thus the Evidence Act as it stands violates instead of observes in this particular the true principles of evidence. I shall prove this by a simple example taken from the ordinary affairs of life. Supposing any one of us had a watch stolen and complained to the police. Suppose that after a police inquiry the policeman brought up a servant and the servant in the owner's presence and in the policeman's presence admitted the theft of the watch. Would the owner say, 'No, this cannot be true, because this confession is made in the presence of a policeman and in the absence of a Magistrate.' Surely not. He would say to the servant 'you stole my watch, did you, scoundrel?' where is it?' Thus showing that in spite of the Evidence Act, he fully accepted the confession of the servant.

"I next come to the case of an accomplice's evidence. This is very remarkable, because under section 133 of the Evidence Act a conviction can be based upon the unsupported testimony of an accomplice. Nevertheless, High Court after High Court has disregarded this section and has preferred to follow illustration B of section 114. This lays down that the Court may presume the evidence of an accomplice as unworthy of credit unless supported in material particulars. I do not wish in any way to quarrel with the Judges of the High Court over this, but I would say with all respect and deference that they are really following an old tradition of English law which has little or nothing to do with the principles of evidence. I have heard it said, and I believe correctly, although I cannot speak positively as I have made no independent research, that this practice of rejecting the unsupported testimony of an accomplice is based upon the old treason trials of England. A man convicted of treason was sentenced to be hanged, drawn and quartered, an extremely lingering and painful death. The result was that Judges, except in times of great political excitement, used to do their utmost to get the accused off. They first ruled that no man should be convicted of treason except upon the testimony of two

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eye-witnesses. As these two eye-witnesses were generally accomplices, the Judges next ruled that the unsupported testimony of an accomplice was unworthy of credit unless supported in material particulars. They thus attained their object by getting off a large number of accused persons. From treason trials the practice spread to other trials, and thus we have now as part of law of the land this practice which is based not upon the true principles of evidence, but on the cruelty of the ancient English law. To make my meaning clear, I give another instance drawn from the affairs of daily life. Supposing one Smith came up to any one of us and said 'Brown and I have killed your son.' Would the father then say to himself, 'Smith no doubt killed my son but not Brown,' for the only thing against Brown is the unsupported testimony of Smith. Surely not. The first thing the father would do would be to go off to the nearest police-station and charge both Smith and Brown with murder.

"My next illustration is the case of hearsay evidence. Here at least it may be thought that we are on solid rock and that whatever else is right or wrong, every statement made in a court must be first-hand testimony. To revert once more to the Pickwick trial, when Mr. Samuel Weller was giving his evidence he let fall the remark 'out with it, as the policeman said to the little boy when he had swallowed a farthing.' Instantly Mr. Justice Stareleigh woke up and said, 'you must not tell us what the policeman said or anybody else said, because that would not be evidence.' My Lord, it might well be thought that a rule of evidence, the breach of which would rouse even Mr. Justice Stareleigh from his slumbers must contain a truth so tremendous that it would be accepted by the whole civilized world. It may, therefore, come by a slight surprise to many members of this Council to hear that neither France, Spain, Italy nor Belgium exclude by their laws hearsay evidence in trials. But it may be said 'Oh, these are no doubt civilized nations. Italy is the mother of arts and music. France is the home of pure reasoning and scientific thought, but for the true principles of jurisprudence we must go to Britain.' Well, my Lord, I would ask the members of this Council to come with me to Britain and search there the true principles of jurisprudence. The Island of Great Britain includes two kingdoms, and I have often heard it said by gentlemen born in the north of the Tweed that the true secret of England's greatness is her good fortune in being allied to her sister kingdom which is far the greater and far more splendid historically of the two. My Lord, it is not for me, a mere Irishman, to decide between the conflicting claims of these two great and famous monarchies. But I think, I can say, without fear of contradiction, that the Scotch Courts hold as high a reputation as any courts in Europe, and that the intellects of the Judges who preside over them and of the advocates who practise in them are as clear and as penetrating as any judges or any advocates anywhere else. It will, therefore, be a surprise to some members of this Council to learn that in Scottish courts hearsay evidence is not excluded. Now what is the reason? The reason, my Lord, has nothing whatever to do with the true principles of evidence. The jury system of England goes so far back that there was a time when juries were so ignorant and so uneducated that judges despaired of making them understand the difference in the value of first-hand and second-hand evidence. They therefore cut the gordian knot by excluding second-hand evidence altogether. This was no doubt convenient, but it was not in consonance with true principles. I will again support my argument by an instance drawn from the common affairs of life. Supposing the son of any one of us was bathing and Smith came up to one of us and said 'Brown tells me that your son has been drowned.' Would not we be stricken with grief; would not we rush off to the seashore in the hope either of saving our son or at any rate recovering his body? And yet, my Lord, in a court of justice Smith's evidence on the subject would be absolutely excluded unless and until Brown went into the witness-box and related what he had himself seen

His Excellency the President:—"I am very loth to stop you, Mr. Kincaid. We all know it is a very interesting subject. But will you now come to the amendment?"

The Hon'ble Mr. C. A. Kincaid:—"My Lord, I thought I was speaking to the amendment."

His Excellency the President :—" I know it is a most interesting subject. It is now 5 o'clock. Will you come to the amendment ?"

The Hon'ble Mr. C. A. Kincaid :—" Very well, my Lord, if that is your Lordship's view I shall bring my speech to a close, as quickly as possible.

" I do not want to decry the rules of the law of evidence at all They have proved excellent in practice, and in the ordinary law Courts I would not change them for the world. All I want to impress on the Council is that they are merely one method, and often a rough and ready method of finding out the truth. They have nothing holy or sacred in them. They do not claim a divine origin like the Bible, the Koran or the Vedas to quote my Hon'ble friend Mr. Sarma. But it may be said that it is true that the rules of the law of evidence have their faults, but still they have been universally adopted in tribunals and it is a sound judicial rule *stare decisis*. There is no doubt something in that, and if every tribunal had adopted the rules of evidence, I would admit there was a very great deal in it. But under section 1 of the Evidence Act the rules of the law of evidence do not apply to arbitration tribunals. Now, my Lord, the men who preside over arbitration courts are not lawyers, they are not men trained in sifting evidence, they are just ordinary laymen. Yet the law pays such respect to their decisions that it will not allow the courts to interfere with them; it will not allow the parties any right of appeal. I think from this it is clear that the Legislature admits that there are other ways of arriving at the truth than by a slavish adherence to the rules of the law of evidence."

The Hon'ble Dr. Tej Bahadur Sapru :—" My Lord, it is somewhat an irony of fate 5-4 P.M.

His Excellency the President :—" Will you be long, Dr. Sapru ?"

The Hon'ble Dr. Tej Bahadur Sapru :—" No, my Lord, I will take only 5 or 6 minutes.

"It is somewhat an irony of fate that we, Indian lawyers, should feel proud of British jurisprudence, while true born Englishmen should have to find fault with their own. When I heard Mr. Kincaid finding fault with English jurisprudence and referring to French jurisprudence, Italian jurisprudence and Russian jurisprudence,—probably he did not refer to Russian jurisprudence, I was wondering whether Mr. Kincaid would not after his retirement go to Parliament and play the *rôle* of Bentham and ask English Judges and juries to revise and to throw away all their inherited rules of evidence and accept his own ideal of the law of evidence. I am old fashioned enough to think that the rules of evidence which have been framed by English lawyers are based on accumulated human experience, and that if there is occasion for the observance of those rules in ordinary cases in India, there is the still greater occasion for the use of these rules in cases of this character where frankly and avowedly you are not adopting judicial form.

" My Lord, I will content myself by reading to your Lordship a passage from a book which probably represents more or less either the ideas or the wishes of the Hon'ble Mr. Kincaid on this matter. A learned legal writer (Mr. Carter) says :—

' A method of trial, where witnesses in our sense are rarely if ever called, may do its work well enough in a small community where everybody knows what everybody else is doing; but these primitive conditions did not last for ever, and when they changed, the position of an accused person must have been, according to modern notions, extremely harsh and difficult. He was not permitted to call witnesses. Queen Mary is said to have directed the judges to allow prisoners to call witnesses in felony; but this was regarded as an indulgence, the ruling being that witnesses were not to be heard against the Crown, even in felony, and if such witnesses were called, they were not sworn. Before the great Civil War the following were the features in which a criminal trial differed from a criminal trial of to-day :—

(1) The prisoner was confined more or less secretly and could not prepare his defence. He was examined and his examination taken down and used against him.
(2) He had no notice of the evidence which was going to be produced against him.
(3) He had no counsel either before or at trial.

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(4) There were no rules of evidence as we understand them. The witnesses were not necessarily confronted with the prisoner, nor were originals of documents produced, the confessions of accomplices were not only admitted, but were regarded as specially cogent.

(5) The prisoner was not allowed to call witnesses on his own behalf; had he been permitted, he could not have done so with effect, for he could not find out what evidence they would give, or procure their attendance. In later times they were not examined on oath even if they were called.

After the Civil War some improvements were made. In 1695 persons indicted for high treason or misprison of treason were to have a copy of the indictment five days before trial and to have counsel and witnesses upon oath.'

"If all the arguments of Mr. Kincaid are to prevail, we must be prepared in the year 1919 to go back to the times before the great Civil War."

5-7 P.M. **The Hon'ble Mr. V. J. Patel:**—"Your Excellency, in this discussion one is likely to lose sight of the main amendment that is for the consideration of the Council, and it is that I do not want this Council to say that the investigating authority shall in all cases be bound to follow the rules of evidence; all I want is that they shall pay attention to the rules of evidence."

The motion was put and the Council divided as follows:—

Ayes—16.	*Noes—34.*
The Hon'ble Sir Gangadhar Chitnavis.	His Excellency the Commander-in-Chief.
Mr. S. N. Banerjea.	The Hon'ble Sir Claude Hill.
Raja of Mahmudabad.	" " Sir Sankaran Nair.
Dr. T. B. Sapru.	" " Sir George Lowndes.
Pandit Madan Mohan Malaviya.	" " Sir Thomas Holland.
" Mr. S. Sastri.	" " Sir William Vincent.
" Mr. B. N. Sarma.	" " Sir James Meston.
Mr. V. J. Patel.	" " Sir Arthur Anderson.
Mr. M. A. Jinnah.	" " Sir Verney Lovett.
Sir Fazulbhoy Currimbhoy.	" " Mr. H. F. Howard.
Maharaja Sir M. C. Nandi.	" " Sir James DuBoulay.
Khan Bahadur Mian Muhammad Shafi.	" " Mr. A. H. Ley.
Sardar Sundar Singh.	" " Mr. W. M. Hailey.
Mr. G. S. Khaparde.	" " Mr. H. Sharp.
Rai B. D. Shukul Bahadur.	" " Mr. R. A. Mant.
Mr. K. K. Chanda.	" " Major-General Sir Alfred Bingley.
	Sir Godfrey Fell.
	Mr. F. C. Rose.
	Mr. C. H. Kesteven.
	Mr. D. de S. Bray.
	Lieutenant-Colonel R. E. Holland.
	Surgeon-General W. R. Edwards.
	Mr. G. R. Clarke.
	Mr. H. Moncrieff Smith.
	Mr. C. A. Barron.
	Mr. P. L. Moore.
	Mr. T. Emerson.
	Mr. E. H. C. Walsh.
	Mr. C. A. Kincaid.
	Sir John Donald.
	Mr. P. J. Fagan.
	Mr. J. T. Marten.
	Mr. W. J. Reid.
	Mr. W. F. Rice.

The amendment was therefore negatived.

[The Council adjourned till 5-40 P.M.]

5-40 P.M. **The Hon'ble Mr. G. S. Khaparde:**—"The amendment which I wish to move, your Excellency, reads as follows:—

'That in clause 25(5) for the words 'may if it thinks fit' the word 'shall' be substituted.'

Clause 25(5) at present runs:—

'On the completion of the inquiry, the investigating authority shall report in writing to the Local Government the conclusions at which it has arrived, and may, if it thinks fit, adduce reasons in support thereof.'

"For the words 'may, if it thinks fit', I would propose to substitute the word 'shall.'

"This, I take it, will not do any injury to any one, because this report will be intended for the Local Government and the Local Government would like, I believe, to have all such reasons as the investigating authority may think fit to put down. So I wish to substitute the word 'shall' for the words 'may, if it thinks fit'."

The Hon'ble Sir William Vincent:—"I am prepared to accept this amendment on behalf of the Government."

The motion was put and agreed to.

The Hon'ble Mr. V. J. Patel:—"May it please your Excellency I beg to move that to clause 25 (5) the following be added:— 5-42 P.M.

'In such conclusions the investigating authority shall state clearly whether or not, in its opinion, the person is or has been actively concerned in any anarchical or revolutionary movement as alleged by the Local Government.'

"On a reference to clause 21 read with clause 25 your Excellency will find that the Local Government has to make an order against the person on the ground that the man is concerned with any movement referred to in section 20. The investigating authority should, I submit, on that information clearly find whether the person concerned is or is not concerned in the movement referred to in section 20 as alleged by the Local Government. I do not for a moment suggest that the Local Government is bound to accept that finding. All that I want is that the investigating authority should be required to state clearly its finding as to this particular allegation."

The Hon'ble Sir William Vincent:—"My Lord, we believe the object which the Hon'ble Member has in view is already met by the words of the clause as drafted, but if it will satisfy his wishes I am quite prepared to accept the amendment in the following modified form. Perhaps the Hon'ble Member will compare it. 5-44 P.M.

'That to sub-clause 5 of clause 25 the following be added:—

'In reporting such conclusions the investigating authority shall state whether or not, in its opinion, the person in question is, or has been, actively concerned in any movement of the nature referred to in section 20.'

The Hon'ble Mr. V. J. Patel:—"My Lord, this is all right; it meets the requirements of my amendment."

The amendment in the modified form was put and agreed to.

The Hon'ble Mr. Kamini Kumar Chanda:—"I think, My Lord, this disposes of my amendment* No. 126." 5-46 P.M.

His Excellency the President:—"You do not wish to press your amendment."

The Hon'ble Mr. Kamini Kumar Chanda:—"No, my Lord." 425

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* That to clause 25(5) the following provision be added:—

'Provided that the investigating authority shall first record its finding as to whether it is satisfied that the person in question is or has been actively concerned in such area in any movement of the nature referred to in section 20, and in case it is not so satisfied the person shall be at once discharged.'

The Hon'ble Rao Bahadur B. N. Sarma :—"In view of the acceptance by Government of amendment No. 112, I beg to withdraw my next amendment.*"

The amendments were by leave withdrawn.

The Hon'ble Mr. Kamini Kumar Chanda :—"My Lord, I beg to move—

'That in clause 25 (*6*) for the word 'may' the word 'shall' be substituted.'

His Excellency the President :—"The word 'may' occurs three times in that sub-clause. Which one do you mean ?"

The Hon'ble Mr. Kamini Kumar Chanda :—"I mean the 'may' in the last line 'and on such a recommendation, the Local Government may extend the duration of the order accordingly.'

"I would propose that instead of the 'may' there the word 'shall' be substituted."

The Hon'ble Sir James DuBoulay :—"There is some difficulty in understanding which of the various 'mays' Mr. Chanda refers to."

His Excellency the President :—"The Hon'ble Member means the 'may' in the second last line."

The Hon'ble Sir James DuBoulay :—"It seems to me that this would prevent the Local Government from letting a man go, though the investigating authority had not completed its inquiries or come to any conclusion, the Local Government had independently made up its mind that there were not sufficient grounds for taking action against the person concerned.

"We are therefore not prepared to accept this amendment."

The motion was put and negatived.

The motion that clause 25 as amended by the Select Committee and as further amended stand part of the Bill was put and agreed to.

The Hon'ble Sir William Vincent :—"My Lord, I move that clause 26 as amended by the Select Committee stand part of the Bill."

5-46 P.M **The Hon'ble Mr. Kamini Kumar Chanda :**—"My Lord, I beg to move the following amendment :—

'That in clause 26 (*1*) for the words 'may discharge' the words 'if the report shows that such authority is not satisfied that the person is or has been actively concerned in such area in any movement of the nature referred to in section 20 shall discharge' and for the words 'or may make' the words 'and in other cases may make' be substituted.'

"The sub-clause will then read like this :—

"'On receipt of the report of the investigating authority, the Local Government, if the report shows that such authority is not satisfied that the person is or has been actively concerned in such area in any movement of the nature referred to in section 20, shall discharge the order made under section 21, and in other cases may make any order which is authorised by that section.'"

The Hon'ble Sir William Vincent :—"My Lord, I have attempted to explain to this Council more than once that the investigating authority is not a judicial body. The effect of the Hon'ble Member's amendment would be to make the decision or the opinion of the investigating authority a mandate to the Government. Well, that is exactly what is not contemplated. I can assure the Council that in 99 cases out of 100 the opinion of the investigating authority is accepted, and if Hon'ble Members have taken the trouble to withdraw from the table a copy of a statement which I laid thereon showing

* That in clause 25(*6*) the word 'If' be deleted and for the words 'has not completed' the words 'shall complete' be substituted and the words 'from such authority' to the end of the sub-clause be deleted.'

the action taken on reports by advisory committees recently, they will see that it entirely bears out what I say. But there are exceptional cases in which Government does not accept the views of the Committee. There may be and have been such cases, but apart from this the matter is really one of principle. The responsibility for releasing these men or keeping them under restriction is the Executive Government's."

The Hon'ble Mr. Kamini Kumar Chanda:—"I do not quite appreciate the object of this arrangement. Why then have this authority at all? If the finding of the authority is to have no weight, you might as well not have this authority." 5-49 P.M.

The motion was put and negatived.

The Hon'ble Mr. G. S. Khaparde:—"My Lord, I withdraw my amendment—

"That in clause 26 (*1*) for the word 'may' the word 'shall' be substituted and after the words 'section 21' the words 'if the investigating authority has so recommended' be inserted and for the word 'or' the words 'and in other cases' be substituted."

The amendment was by leave withdrawn.

The Hon'ble Rao Bahadur B. N. Sarma:—"My Lord, I withdraw my amendment—

"That in clause 26 (*1*) for the words from 'or may make' to the word 'section' the words 'and shall do so, if the investigating authority reports favourably to the persons accused' be substituted."

The amendment was by leave withdrawn.

The Hon'ble Mr. V. J. Patel:—"My Lord, I withdraw my amendment—

"That in clause 26 (*1*) after the words 'is authorised by that section' the words 'and justified by the report' be inserted."

The amendment was by leave withdrawn.

The Hon'ble Mr. G. S. Khaparde:—"I beg to move—

"That in proviso (*a*) to clause 26 (*1*) after the words 'that authority' the words 'and its reasons therefor' be inserted."

"This is a very small amendment. If the proviso remains as it is, the investigating authority might only give their conclusions but not the reasons for those conclusions, and I make it necessary that they should state the reasons for their conclusions, and that is all."

The Hon'ble Sir William Vincent:—"My Lord, the Hon'ble Member described his amendment as a small one, and I have heard him describe other amendments in the same words. The effect of it, however, will be to make it incumbent on the investigating authority to disclose to the person whose case is under investigation the whole of the information given against him. Well, I have been at some pains on various occasions this afternoon to explain to the Council what that means. It clearly involves exposing persons who have given information to Government to the danger of immediate assassination. I am a little surprised that my friend the Hon'ble Mr. Khaparde should seek to place persons who have assisted Government in that dangerous position. I am afraid that I must oppose this amendment."

The amendment was by leave withdrawn.

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The Hon'ble Rao Bahadur B. N. Sarma:—"My Lord, I beg to move:— 5-53 P.M.

"That in clause 26 (*2*) for the words 'on which it was made' the words 'of the order made under section 21' be substituted."

"The clause would read thus—

"No order made under sub-section (*1*) shall continue in force for more than one year from the date of the order made under section 21."

"It is a matter of some importance because if the order is to be in force for one year from the date on which

"The Hon'ble Sir William Vincent: —"May I interrupt—merely to save time—to inform the Hon'ble Member that I am prepared to accept the amendment?"

The motion was put and agreed to.

The Hon'ble Rao Bahadur B. N. Sarma:—"I beg to move—

"That to clause 26 (*2*) the following be added:—

"The Local Government shall pass its order on the report within a week from the receipt thereof and the interim order shall remain in force till then."

"The first part was intended to curtail as far as possible the period during which an interim order should have been in force against the accused; but in view of the modification of clause 2, which was accepted by the Government, I do not press this part.

"But I submit the second part may well be accepted, because I think the recommendation of the investigating authority to extend the period of the order passed under section 21 would ordinarily be confined to the date on which they may make their recommendation. Supposing one month expires and the period provided for in clause (6) expires, it would take some time for the Government to pass their orders on the report. There is no provision as far as I can see—I speak subject to correction—there is no provision for the extension of the order. I therefore say that the interim order shall remain in force till then. But it is really immaterial whether the Government accept or not."

The Hon'ble Sir William Vincent:—"My Lord, the Government have no objection to this amendment, but I hope the Hon'ble Member sees the effect of his proposal: it will allow the Government to keep an order in force indefinitely, and I am not sure that this is what he intends."

5-54 P.M. **The Hon'ble Rao Bahadur B. N. Sarma:**—"I will not press the amendment, my Lord. It would have been necessary if my other amendment had not been accepted."

The amendment was by leave withdrawn.

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I beg to move—

"That in clause 26 (3) after the words 'again make' the words 'a reference to the investigating authority and the same procedure as laid down in the foregoing sub-clauses of this section shall *mutatis mutandis* be observed' be inserted and the rest of sub-clause be deleted."

"The clause would then read—

"On the expiry of an order made under sub-section (*1*), the Local Government may, if it is satisfied that such a course is necessary in the interests of the public safety, again make a reference to the investigating authority and the same procedure as is laid down in the foregoing sub-clauses of this section shall *mutatis mutandis* be observed."

The Hon'ble Sir William Vincent:—"My Lord, I am afraid I am not prepared to accept this amendment as it stands, but I hope to be able to meet to a great extent what the Hon'ble Member seeks in connection with an amendment to be moved by the Hon'ble Mr. Shafi later."

His Excellency the President:—"Do you accept this arrangement, Mr. Chanda?"

The Hon'ble Mr. Kamini Kumar Chanda :—"Yes, my Lord."

The amendment was by leave withdrawn.

The Hon'ble Mr. G. S. Khaparde :—"My Lord, I will await the result of the amendment to be moved by the Hon'ble Mr. Shafi (No. 139) before moving mine."

The Hon'ble Rao Bahadur B. N. Sarma :—"I will do the same, my Lord."

The Hon'ble Khan Bahadur Mian Muhammad Shafi :—"My Lord, I beg to move—

"That in clause 26, sub-clause (*4*) be deleted and the following be inserted as a further proviso to sub-clause (3) :—

"Provided, further, that before an order is made under this sub-section, a copy thereof shall be furnished to the person concerned, who may submit to the Local Government a representation in regard to such order. Any such representation shall be forwarded by the Local Government to the investigating authority for inquiry and report, and the investigating authority, after inquiry conducted in accordance with section 25, shall report thereon, and the Local Government shall consider the report of such authority."

"As I understood the Hon'ble the Home Member to say that he was prepared to accept this amendment, I need not take up the time of the Council in discussing the reasons for which I move the amendment."

The Hon'ble Sir William Vincent :—"I am prepared to accept the amendment, but there is a small change in the wording and perhaps, as other Hon'ble Members are interested in this matter, I might read it out :— 5-55 P.M.

"Provided that before an order is made under this sub-section, a copy of the order which it is proposed to make shall be furnished to the person concerned, who may submit to the Local Government a representation in regard to such order. Any such representation shall be forwarded by the Local Government to the investigating authority for enquiry and report, and the investigating authority, after inquiry conducted in accordance with section 25, shall report thereon, and the Local Government shall consider the report of such authority."

The Hon'ble Khan Bahadur Mian Muhammad Shafi :—"I am satisfied."

The motion as amended was put and agreed to.

The Hon'ble Rao Bahadur B. N. Sarma :—"My Lord, this is the amendment * that to clause 26 (*3*) the following proviso be added :—

* To be moved if the amendment proposed in clause 26 (*1*) be not accepted.

"Provided that when an order was passed under section 26 (*1*) which is not supported by the conclusion of the investigating authority under section 25, an order shall be passed under this clause only after reference to the investigating authority and on the strength of its conclusions."

"It is also referred to in amendment No. 140 which runs as follows :—

'That to clause 26 (4) the following be added :—' and pass orders in accordance with its conclusions.'

"I do not wish to speak on these; I merely ask your Lordship to put them. I do not wish to withdraw them. I wish to put the last portion of amendment No. 138; that the Government are not going to allow the investigating authority's conclusions to be final. I do not want to say anything about that."

The motion was put and negatived.

His Excellency the President :—"May I inquire if Mr. Chanda and Mr. Khaparde wish to put their amendments Nos. 136* and 137† ?"

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* See page 692, *supra*.

* That in clause 26 (*3*) after the words "again make," the words "a reference to the investigating authority and the same procedure as is laid down in the foregoing sub-clauses of this section shall *mutatis mutandis* be observed" be inserted and the rest of sub-clause be deleted.

† That in clause 26 (*3*) after the words "again make" the words "on a fresh reference to the investigating authority" be inserted.

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The Hon'ble Mr. Kamini Kumar Chanda :—' No, my Lord."

The Hon'ble Mr. G. S. Khaparde :—" No, my Lord."

His Excellency the President :—" Amendment No. 140 automatically drops following the fate of No. 138. The question is that clause 26, as amended by the Select Committee and as further amended, stand part of the Bill."

The motion was put and agreed to.

The Hon'ble Sir William Vincent :—" My Lord, I move that clause 27, as amended by the Select Committee, stand part of the Bill."

6 P.M. **The Hon'ble Mr. Kamini Kumar Chanda :**—" I wish to move a small amendment to this, my Lord, that in clause 27 after the words 'punishable with' the word 'simple' be inserted. I say, my Lord, that disobedience to an order under this Part should be punishable with simple imprisonment in accordance with section 188 of the Indian Penal Code which says: 'Whoever knowing that by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management disobeys such direction shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month.' Of course, there is another clause of the same section which says 'and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months or with fine

" My submission, my Lord, is that in accordance with the earlier part of the same section the sentence should be simple imprisonment."

The Hon'ble Sir William Vincent :—" My Lord, the punishment under section 188, Indian Penal Code, where disobedience to the order promulgated causes or tends to cause danger to human health, life or safety or causes or is likely to cause a riot or affray, is imprisonment of either description for six months, and I submit that a person who disobeys an order under the law, which is directly connected with a movement against the public safety, certainly deserves no more consideration."

The Hon'ble Mr. Kamini Kumar Chanda :—" But in some cases under section 188 of the Indian Penal Code the punishment is simple."

The motion was put and negatived.

The Hon'ble Mr. V. J. Patel :—" My Lord, I beg to move—

" That in clause 27, for the word 'six months' the words 'three months' and for the words 'one thousand rupees' the words 'five hundred rupees' be substituted.

" I am sure my Hon'ble friend, the Home Member, is aware that there is some feeling on the subject, and I trust the Government will consider this favourably."

6-3 P.M. **The Hon'ble Sir William Vincent :**—" My Lord, I am willing to accept the Hon'ble Member's amendment in so far as it relates to the amount of fine, because as far as I know there have been no cases in which fines exceeding five hundred rupees have been imposed. If it would meet the Hon'ble Member in any way to have the amendment framed in the following words, I am quite prepared to accept it :—

" That in clause 27 for the words 'one thousand rupees' the words 'five hundred rupees' be substituted."

The Hon'ble Mr. V. J. Patel :—" My Lord, it is all right so far as it goes ; I have no objection, it may go in." 6-5 P.M.

The amended motion was put and agreed to.

The motion that clause 27, as amended by the Select Committee and as further amended, stand part of the Bill was put and agreed to.

The Hon'ble Sir William Vincent :—" My Lord, I move that clause 28 do stand part of the Bill."

The Hon'ble Rao Bahadur B. N. Sarma :—" I move, my Lord, that in clause 28 after the words ' District Magistrate ' the words ' or Sessions Judge ' be inserted. This clause deals with the forfeiture of security bonds, and I submit that, inasmuch as the question is one of some importance power may be conferred upon Sessions Judges also because after all the choice of the Sessions Judge lies with the Local Government. I only enlarge the scope and the sphere from which the choice should be made, and I hope the Government will be able to accept it." 6-6 P.M.

The Hon'ble Sir William Vincent :—" My Lord, I am afraid I must oppose this amendment. It is clearly not in accordance with ordinary practice. The enforcement of bonds is a matter for the District Magistrate rather than for the Sessions Judge. The bond here is imposed or taken on the motion of an executive authority and the enforcement and realisation of it should be entrusted to a Magistrate."

The motion was put and negatived.

The motion that clause 28 stand part of the Bill was put and agreed to.

The Hon'ble Sir William Vincent :—" My Lord, I move that clause 29, as amended by the Select Committee, do stand part of the Bill." 6-8 P.M.

The Hon'ble Mr. V. J. Patel :—" My Lord, I beg to move that in clause 29 for the words ' Local Government ' wherever these words occur in the said clause, the words ' Chief Justice ' be substituted. To put in two words, the amendment means that the power to appoint the investigating authority should be vested in the Chief Justice and not in the Local Government. The reason is this, my Lord, that it is the Local Government who makes the first order, the interim order ; it is the Local Government who lays information before the investigating authority ; it is the Local Government under the clause as it stands who appoints the investigating authority ; it is the Local Government who has to receive the report of the investigating authority and it is the Local Government, finally, that is to decide the fate of the man. I therefore submit that so far as the investigating authority is concerned, it must feel that it is to some extent independent of the Local Government. For these reasons I move this amendment. I trust the Hon'ble Member will accept it."

The Hon'ble Sir William Vincent :—" My Lord, I regret that I cannot think of accepting this amendment. The action is in this case taken by the executive Government and the responsibility is that of the executive Government. There is no reason why the Chief Justice should be placed in the somewhat awkward position which the Hon'ble Member proposes. The procedure proposed under the Bill for the investigating authority is not judicial ; that is a point which we have attempted to make clear from time to time ; indeed, I doubt whether the Chief Justice would be in a position to appoint the investigating authority. From my experience I believe also that Chief Justices would be the first to object to the proposal which the Hon'ble Member makes, which would have the effect of mixing them up with executive proceedings of this character." 6-10 P.M.

The Hon'ble Mr. V. J. Patel :—" I am sorry, my Lord."

The motion was put and negatived.

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6-11 P.M. **The Hon'ble Mr. Surendra Nath Banerjea:**—"I beg to move, my Lord—

'That in clause 29 (2) for the words 'one shall be a person' the words 'two shall be persons' and for the words 'a person' the words 'an Indian' be substituted.'

"My Lord, the amendment is somewhat cryptic. The section refers to the constitution of the investigating authority; it says that the investigating authority shall consist of three persons; the status and character of two persons named in the clause are mentioned, *i.e.*, to say one shall be a judicial officer not below the rank of a Sessions Judge, and the other a non-official; but who the third is to be is not defined. I want to make the personnel of the investigating authority definite, and I suggest that two of the members of the investigating authority shall be officers not below the rank of District and Sessions Judges and the third shall be a non-official Indian. My Lord, we have some experience of these boards in Bengal, and, I believe, the suggestion that I have made is a suggestion that is generally followed in the constitution of these boards.

"I remember the work of one board. A dacoity took place not very far off from the place where I lived and the president was a District Judge. He was a High Court Judge for some time. There were two other members, and one was a retired High Court Judge. The Hon'ble the Home Member probably knows him, Dewan Bahadur Hari Nath Rai. The other member was a non-official. I know another investigating board and the constitution was upon the same line. These tribunals gave satisfaction in the performance of their duties. Inasmuch as you have that experience I want to embody it in the Bill. Having regard to the facts I have mentioned I hope my Hon'ble friend will see his way to accept this small amendment; it does not in any way interfere with the scope of the Bill."

The Hon'ble Mr. V. J. Patel:—"My Lord, I am sorry that I have to oppose this amendment. I know that the Hon'ble the Home Member will try to accept it."

The Hon'ble Sir William Vincent:—"I can assure Mr. Patel that I will not force it on the Council."

The Hon'ble Mr. V. J. Patel:—"That is my view. I am not in favour of an Indian being on the investigating board, because we Indians do not hold ourselves responsible for the passing of this measure. I think no Indian should serve on these investigation boards."

6-13 P.M. **The Hon'ble Sir William Vincent:**—"I was very pleased to hear from the Hon'ble Mr. Banerjea that the investigating authorities or advisory committees that he mentioned do give such satisfaction. It was the more gratifying to me because some of the remarks which have been made from time to time in this Council indicated that they were of no use. We have now cogent evidence from a non-official member of this Council as to the value of their work. I am quite prepared to accept the amendment of the Hon'ble Member providing that the members of the authority shall be judicial officers. I would ask the Hon'ble Member not to insist on a statutory condition that one member should be an Indian as it is inadvisable to make these racial distinctions in a Statute. I will ask the Hon'ble Member, if he will take it from me, that we will issue instructions to Local Governments that one Indian shall certainly be on the boards."

The Hon'ble Mr. Surendra Nath Banerjea:—"I accept that."

The motion* was put and agreed to.

The Hon'ble Mr. V. J. Patel:—"I beg to withdraw the amendment—

'That in clause 29 (2) for the words 'one shall be a person having held' the words 'two shall be persons having held' be substituted.'"

* That in clause 29 (2) for the words 'one shall be a person' the words 'two shall be persons' be substituted.

The amendment was by leave withdrawn.

The Hon'ble Mr. G. S. Khaparde :—" I beg to withdraw the amendment—

'That in clause 29 (*2*) for the words 'and one shall' to the end of the sub-clause the words 'the remaining two shall be practising pleaders of not less than 10 years' standing and not in the service of the Crown of India' be substituted.' "

The amendment was by leave withdrawn.

The Hon'ble Rao Bahadur B. N. Sarma:—" I beg to move the following amendment :— 6-15 P.M.

'That in clause 29 (*2*) for the words from 'and one' to the word 'India' the words 'the remaining two being elected by the non-official members of the Legislative Council from among the elected members' be substituted.'

" I want one of the members of the investigating authority to be a judicial officer and that he should be associated with the members of the local Council elected by it. My object is that this may inspire confidence in the public, that if the administrative machinery to be devised by the Government should consist partly of elected members of the Council, who may be chosen from among a panel or otherwise selected, it would inspire confidence in the public. The elected men would be responsible to the voters and public safety would be promoted. "

The Hon'ble Sir William Vincent:—" I think the Government would be in some difficulty in this matter if they accepted this amendment. We have heard Mr. Patel say that he was quite unwilling that any member of the investigating authority should be an Indian. In what position would the Government be left in the matter? I do not think also that the Hon'ble Mr. Sarma can have thought of the burden he was placing on the panel of members selected from the Provincial Council. I suggest it would be unwise for the Council to impose on non-official members a burden of this kind without consulting them." 6-17 P.M.

The Hon'ble Rao Bahadur B. N. Sarma:—" I have not said that the gentlemen selected should be Indians, they may be."

The Hon'ble Sir William Vincent :—" They have to be elected members."

The Hon'ble Rao Bahadur B. N. Sarma :—" They may be Europeans?"

The Hon'ble Sir William Vincent:—" Am I to understand that the Hon'ble Member intends to select members like Mr. Hogg or Mr. Ironside."

The Hon'ble Rao Bahadur B. N. Sarma :—I am certain that if Mr. Hogg or Mr. Ironside worked on the Provincial Council, there would not be very much difference in many essential points between them and their Indian colleagues. I have not suggested that the members who are to sit should be Indians, so there ought not to be any difficulty. As regards the second point raised by the Hon'ble the Home Member as to the burden that would be thrown on non-official members, if they are to be responsible men, if they choose to represent their country, they should take over this burden and to suppress revolutionary and anarchical movements, should help the Government by their presence on these bodies and by their co-operation. I think non-officials should be glad if the Government imposed this burden on them? " 6-19 P.M.

The motion was put and negatived.

The Hon'ble Mr. V. J. Patel:—" I beg to withdraw my amendment— 433

'That in clause 29 (*2*) for the words 'one shall be a person not in the service of the Crown of India' the words 'two shall be pleaders being non-officials and practising for not less than ten years' be substituted.' "

The amendment was by leave withdrawn.

6-20 P.M. **The Hon'ble Mr. Kamini Kumar Chanda:**—"I beg to move the following amendment :—

'That in clause 29 (*2*) for the word 'one' the word 'two' be substituted and after the words 'in India' in the same sub-clause the words 'selected from a panel of six persons nominated by the Provincial Legislative Council' be inserted.'"

The motion was put and negatived.

The Hon'ble Mr. V. J. Patel:—"I beg to withdraw my amendment—

'That in clause 29 (*2*) for the words 'one shall be a person not in the service of the Crown in India' the words 'one shall be a pleader being a pleader and practising for not less than ten years' be substituted.'"

The amendment was by leave withdrawn.

The motion that clause 29, as amended by the Select Committee, and as further amended, stand part of the Bill was put and agreed to.

6-21 P.M. **The Hon'ble Sir William Vincent:**—"My Lord, I move that clause 30, as amended by the Select Committee, do stand part of the Bill."

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, the amendment that I wish to move reads thus :—

'That in clause 30 (*1*) after the words 'thinks fit' the words 'from a panel of twelve persons nominated by the Legislative Council' be inserted.'

"My Lord, this stands on a different footing, and I hope this will appeal to the Hon'ble the Home Member."

6-22 P.M. **The Hon'ble Sir William Vincent:**—"My Lord, I really do not think that the Hon'ble Member ever expected that we would adopt this amendment, and I believe that a panel such as he proposes would be most unsuitable in every way. Visiting Committees will be appointed for different centres to report upon the welfare of persons under restraint. There may be, I hope there will not be, unless conditions become bad, but there might be four or five different committees in one province in different parts because the members of the Visiting Committees should live near the places of internment so as to be able to look after the welfare of the individuals whom they are to visit, and it might be quite impossible to get suitable people living in the vicinity from the panel chosen by the Legislative Council. Even if it was in accordance with the Government idea of the constitutional position that the Legislative Council should take an authoritative part in a purely executive matter of this kind, a panel of 12 would not be sufficient

The Hon'ble Mr. Kamini Kumar Chanda:—"In that case you might increase the number. Make it 30."

The Hon'ble Sir William Vincent:—"I have taken the amendment as it is put forward."

The motion was put and negatived.

The motion that clause 30, as amended by the Select Committee, stand part of the Bill was put and agreed to.

The Hon'ble Sir William Vincent:—"My Lord, I move that clause 31, as amended by the Select Committee, do stand part of the Bill."

The motion was put and agreed to.

6-24 P.M. **The Hon'ble Mr. V. J. Patel:**—"May it please your Excellency, I beg to move that Part III be deleted,

"Your Excellency, about the provisions of this Bill, the less said the better. After hearing, my Lord, I am bound to say that after three days' hard work I have now fully realised, considering the determined attitude of Government not to yield an inch of ground on any essential particular, that it is hopeless to expect anything in the direction asked for by this amendment. I therefore formally move the amendment and leave it to the good sense of this Council."

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I have nothing more to add to what my Hon'ble friend Mr. Patel has said. I have taken a vow not to speak any more to-night."

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, 6-25 P.M. I support the amendment which has been moved by the Hon'ble Mr. Patel. My Lord, I would like, if I may, once more to try to point out to the Government that there is no necessity for enacting such a piece of legislation as is provided for in Part III, and secondly, that it is not right that it should be so enacted. My Lord, this Part proposes to substitute executive for judicial authority in dealing with cases which are contemplated to be dealt with under it. Section 33 says that the Governor General in Council is to make a declaration, if he is satisfied of the fact, that in the whole or any part of British India anarchical or revolutionary movements are being promoted and that scheduled offences in connection with such movements are prevalent to such an extent as to endanger the public safety, by a notification in the *Gazette of India*, and that, thereupon, the provisions of this Part shall come into force in the area specified. Subsequent to that if, in the opinion of the Local Government, there are reasonable grounds for believing that any person has been or is concerned in such area in any scheduled offence, the Local Government may make in respect of such person any order authorised by section 21, and may further by order in writing direct—

(*a*) the arrest of any such person without warrant;

(*b*) the confinement of any such person in such place and under such conditions and restrictions as it may specify.

"Now, my Lord, presumably the Local Government will have obtained some information; it will be in a position to say that it has reasonable grounds for believing that a particular person has been or is concerned in any such offence as is mentioned here. Presumably that information will have come to the Local Government through the Police and its other executive officers, but not as the result of a judicial investigation. It is proposed that having obtained that information, the Local Government should have power to pass an order of the nature mentioned in section 21, or any of the other orders which are mentioned in the section. Under the ordinary procedure which is provided for in the existing Criminal Procedure Code, it is open to the Local Government to send such a case to a Magistrate for investigation. My friend, the Hon'ble Mr. Patel, drew attention to it in dealing with Part II of this Bill. Section 108 lays down that—

'Whenever a Chief Presidency or District Magistrate, or a Presidency Magistrate or Magistrate of the first class specially empowered by the Local Government in this behalf, has information that there is within the limits of his jurisdiction any person who, within or without such limits, either orally or in writing, disseminates or attempts to disseminate, or in any wise abets the dissemination of—

(*a*) any seditious matter, that is to say, any matter the publication of which is punishable under section 124-A of the Indian Penal Code, or,

(*b*) any matter the publication of which is punishable under section 153-A,

then such Magistrate may require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.'

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"Section 110 gives power to a Presidency Magistrate, District Magistrate and Sub-Divisional Magistrate, who, on receiving information that any person is so desperate and dangerous as to render his being enlarged without security hazardous to the community. I submit, my Lord, that this provision would cover a case such as the one contemplated in sections 32 and 33. It is the Local

Government which would send the case to a Magistrate to deal with. But it is proposed in the Bill that the Local Government should itself pass an order. Is there any justification shown for it? If the Local Government has obtained some information which it is willing to place later on before an investigating authority, what on earth can be the objection to the Local Government placing the same information before a Magistrate in the service of the Government for judicial investigation? Has the Government lost confidence in its Magistrates? Is there any justification for suggesting or implying that the Government has any reason to suspect the honesty, the integrity or the ability of the Magistrates who are serving the Government at present? If there is not, will anybody tell me why the investigation of a matter of the character we are discussing should be taken out of the jurisdiction of the Magistrate, and entrusted to an investigating authority which it is proposed to constitute? If the matter goes before a Magistrate, the man has got all the constitutional safeguards of liberty in having the charge or accusation which may be urged against him properly, judicially tried. He has the opportunity of knowing who his assailant or accuser is. He has the opportunity of knowing what that man has said against him, and he will have the opportunity of putting his evidence to test by cross-examination by the help of a trained lawyer. If the Magistrate should pass an order against him, he would have the opportunity of taking the matter to a High Court and getting the verdict of that Court upon it. I submit, therefore, that there is no justification shown why any case which may arise under section 33 should not be left to be dealt with the ordinary regular courts.

" My Lord, I want to make it clear that none of us for a moment wishes that men who commit crimes shall not be dealt with in the most effective way possible. As I have said repeatedly, these crimes injure my own countrymen most, and I am anxious that none of them should injure themselves or others by indulging in them. I am anxious and my friends are anxious that every reasonable step should be taken to check and eradicate anarchical and revolutionary activities and crimes, but we are also anxious that, in making that attempt, preventible injustice shall be duly guarded against. That is the whole reason of our anxiety for asking that judicial procedure and form should not be replaced by executive authority and action. If the Bill is not passed, it does not mean that the Government will be powerless to deal with such crimes. There is provision in the existing law to enable them to do so. And if it were shown, if it was proved by what has happened in actual cases that these provisions are insufficient, that a proper sufficient effort had been made by strengthening and improving the police, by appointing men who could be trusted to sift evidence and produce only evidence which was true, there might be reason for strengthening the police, improving the judiciary and taking such other steps as might be necessary to strengthen the judiciary. But because in some cases the attempt to bind over or to secure persons who might have been suspected of being implicated in crime or criminal movements has failed, I submit that does not afford any justification for putting aside the regular procedure of courts and substituting executive authority for them. My Lord, there have been cases of failure of justice in the past in the regular courts. But I have not heard it suggested that because there were failures of justice in some cases, therefore the ordinary courts should give place to unjudicial, executive bodies and that they should be left to deal with cases. It is necessary to realise the effect of the procedure that is now proposed. It will be this that the Local Government, on receiving information against a man, may by a mere executive order deprive him of his liberty. My Lord, as my friend the Hon'ble Mr. Jinnah has pointed out, as other Hon'ble Members have pointed out, we do value liberty. We oppose the Bill not because any of us is afraid that these provisions of the law may touch a Member of this Council, though one should not be too sure that they would not. We oppose it because we have concern for those who may fall victims to the exigencies of this procedure. The existence of extra-judicial regulations; of repressive, drastic legislation, has sometimes led to the employment of such provisions to the injustice of individuals, and we are afraid that, if the proposed Part III of the Bill becomes law, it may lead in many cases to irremediable injustice. It is therefore that we are offering our stoutest resistance to the passage of this legislation.

"My Lord, it has been said by some that the impression created in some quarters by our opposition to this Bill would be that we are not sufficiently alive to our duty to our fellowmen to secure peace, order and good government. I cannot believe that such a charge will be advanced by any one who has a knowledge of facts. I hope that our persistent efforts in this Council and other Legislative Councils for years have shown that we have been labouring earnestly, strenuously, prayerfully to promote the welfare of our fellowmen, and it is only that earnest desire to secure their welfare, to secure them from injustice, which leads us to offer this opposition. On the other hand, my Lord, there have been many instances in which Local Governments have erred. That is also a circumstance which we cannot forget, cannot get over. The rules made under the Defence of India Act gave power to Local Governments to adopt certain measures as emergency measures. Those powers have been abused in more than one instance, by more than one Local Government. And we fear that if the powers now proposed are given to Local Governments for three years in times of peace, there is a danger of their being exercised to the injury of individuals. For these reasons I would once more ask the Government to consider the existing provisions of the law and to be content with these provisions and to drop Part III of the Bill which is now before the Council. I venture to repeat that I feel sure that, if that is done, there will be no injury to any public interest. The apprehension that revolutionary and anarchical crimes may be revived is an apprehension against which there are many reasons and circumstances to be taken into account. If they should be revived in any measure, then it will be the time for the Government to consider and enact some special legislation, if it is shown that the existing legislation is insufficient. My Lord, to pass in advance, in apprehension of danger which may never arise, a piece of legislation which subverts the existing system of justice, which takes away powers which are at present exercised by the judiciary, and puts them in the hands of the executive, is an anomalous, dangerous and an unwise procedure. I earnestly wish and hope that the Government will yet see the wisdom of abandoning it."

The Hon'ble Mr. M. A. Jinnah:—"My Lord, I will only quote the words of a very great authority before I say anything more. In a very famous case, which is known as Dâniel's case, one of the greatest jurists and lawyers laid down three propositions : 6-40 P.M.

'The first proposition is that no man can be imprisoned upon the will and pleasure of any, but a bondman or a villein.

'The second proposition. If a freeman of England might be imprisoned at the will and pleasure of the King, or by his command, he were in worse case even than a villein.

'The third proposition. A freeman imprisoned without cause is civilly dead.'

"My Lord, the provisions of Part III of this Bill will bring about this result. First, the selection of the victim will be left to the plenary discretion of the bureaucracy; secondly, my Lord, it means the negation of public safety and defence; and thirdly, my Lord, I say that it is poison to the commonwealth.

"My Lord, to quote the words of Lord Shaw in that famous judgment to which I have referred, this is what he says—

> 'In the exercise of power that the Government have the plainest teachings of history and the dictates of justice demand that, on the one hand, Government power, and, on the other hand, individual rights, these two, shall face each other as party and party.'

He does not say it is said it will not be so. Here, in the provisions of this Bill, the Government, as a party, shall act at its own command; the subject, as a party, shall submit and shall not be heard. The Government is at once to be party, judge and executioner. That, my Lord, seems to be Part III of this Bill. 437

"My Lord, I will not take up the time of this Council any more. I say, my Lord, that Part III is the blackest part of this black Bill. And, my Lord,

I speak with this passion, with this earnestness, with this feeling, because, if it ever finds its place on the Statute-book, it will tarnish the fair name of India and Great Britain. I love India, but, my Lord, I do not love Great Britain the less, because it has been the home of my training and education."

6-45 P.M. **The Hon'ble Sir James DuBoulay:**—"My Lord, I rise to oppose this amendment. I do not think that I need traverse the same ground that was traversed this morning. We all agreed that these are not pleasant measures to have to introduce. It is only the necessity of the case that makes us introduce them.

"When the Hon'ble Pandit Madan Mohan Malaviya said that we had weapons in our hands that we can use, referring us to Chapter VIII of the Criminal Procedure Code, he ignored all that has been said here to-day about the impossibility of bringing evidence into court, the impossibility of following the usual forms of criminal procedure. The first thing that has to be done under that Chapter, when a Magistrate begins his inquiry, is to follow the rules for either summons cases or warrant cases. The witnesses have to come into court to be examined and cross-examined, and all those unavoidable features which we have introduced into the present Bill for the protection of witnesses would go by the board if we confined ourselves to Chapter VIII. He said that if the provisions of the ordinary law have been sufficient in the past, they ought to be sufficient now. We know that they have not been sufficient in the past. We know that if it had not been for the weapon that was placed in our hands by the Defence of India Act, we should have been in a state of chaos in Bengal. We were casting about for some means by which to meet the situation. The Defence of India Act was the weapon which enabled us to meet it, and that is the weapon which in a modified form we are asking you to allow us to continue to use.

"Again, he suggested that the police might have been strengthened. But they have been strengthened. I think anyone here who represents Bengal must know how the budget of the Bengal Province has gone up year by year, and what tremendous increases there have been to every branch of the police in Bengal.

"I cannot believe that the Hon'ble Pandit means that this Government ought to improve the High Court of Calcutta. I do not know what he meant by 'improving' the courts. The fact of the matter is that this Part III is merely an amplication of Part II. The principle is the same as in Part II. We have only a later stage of revolutionary developments here. In Part III we have the effects of revolutionary propaganda in operation and we have these scheduled offences prevalent. The more lenient measures that were sufficient when the movement was only threatening to result in these scheduled offences are no longer sufficient, and it is necessary to take the more drastic measures provided in Part III."

6-47 P.M. **The Hon'ble Dr. Tej Bahadur Sapru:**—"My Lord, so many cases have gone up to the Calcutta High Court in which these terrorists and people of that class have figured, that I do not doubt that it would be possible for Members of the Government to point to any remarks that might have been made in the judgments of the High Court, to the effect that the present law was not fully adequate to the occasion. It is not as if the repressive legislation which has been passed hitherto has not yet come up for discussion in the High Courts. It may be that probably the Hon'ble the Law Member or the Hon'ble the Home Member knows of such remarks; but so far as I recollect, whatever other defects in the present law the High Courts may have pointed out, I do not think they have in so many words said that they feel themselves incompetent to deal with the situation which has arisen in Bengal merely because the law is inadequate or insufficient. It has been assumed during the course of the argument on the official side that the Council, as well as the country, are agreed that the present law is insufficient, and that therefore it is in the highest interests of the State necessary that such extraordinary powers—unknown to English

law—I only hope I shall not be corrected because I take pride in English law—and unknown to Indian law, should be put into force. As my friend, the Hon'ble Mr. Jinnah, has already pointed out, the provisions of this Part are far more drastic than those of any other Part, because by proceeding under this Part, what do you do? You simply say to the man, 'Well, we the Government are satisfied that you have been concerned in some very objectionable and dangerous movement, and we are not going to give you a chance of testing the information that is in our possession, as you would have been entitled to do if we had placed you before a court of law.' My Lord, I submit that among the many things which are really extraordinary about this Bill, there is nothing more extraordinary than the provision of clause 33. Let us remember what it says. It says:—

'Where, in the opinion of the Local Government, there are reasonable grounds for believing that any person has been or is concerned in such area in any scheduled offence, the Local Government may make in respect of such person any order authorised by section 21 and may further by order in writing direct—

(*a*) the arrest of any such person without warrant;

(*b*) the confinement of any such person in such place and under such conditions and restrictions as it may specify:

Provided that no such person shall be confined in that part of a prison or other place which is used for the confinement of convicted criminal prisoners as defined in the Prisons Act, 1894;'

and then it goes on to say some other things.

"Now, my Lord, when the law is set in motion, the only thing that has got to be done is that the Local Government has to say that it is satisfied about the complicity of the man. The moment it says that the man is taken under arrest and put into confinement, and then, and then only has he got any remedy. But what is the remedy? The remedy is that which is laid down in section 36, which says:—

'Where an order (other than an order for arrest or search) has been made under section 33, the provisions of sections 22 to 26 shall apply in the same way as if the order were an order made under section 21, save that, on receipt of the report of the investigating authority, the Local Government may, subject to the conditions prescribed by section 26, make any order which is authorised by section 33, and sections 22 to 26 and 28 to 31, shall be deemed to be included in this Part.'

The same procedure will apply to his case. Are we really persuaded that the procedure provided by Part II is one which will enable a person in that situation really and effectively to test the information on which the Government has taken such a serious step as to deprive him of his liberty and to put him into confinement? My Lord, I think this fairly beats the record of many things which are to be found in this Bill, and I venture to think, my Lord, that it is bound to create, as indeed it has already created, the utmost dissatisfaction and discontent in the country. What will be said is this, that a Government which finds itself unable to cope with the situation, although it has got such extensive and ample powers in the law, seeks shelter behind a law which is no law or—to use an expression which was once used by Sir Rash Behari Ghose—a 'lawless law.' My Lord, I therefore submit, I ask you to think not twice but thrice before you accept this Part III. It is a very serious matter, and it is going to give rise to great trouble—far greater trouble than you have had in the past, and I certainly do not want to see my country plunged into any trouble at this juncture. I must respectfully but firmly protest against the provisions of this Part III; and as my Hon'ble friend, Mr. Patel, has said he fully anticipates that this Part will be passed, my Lord, I must say that I cannot possibly support this Bill but must oppose it and every Part of it."

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The Hon'ble Mr. V. J. Patel:—"My Lord, I have already given my reasons why I do not wish to make any speech on this amendment. I confess, however, I am surprised at the optimism of some of my non-official friends here. I thought they had already realised what I have realised now." 6-54 P.M.

The motion was put and the Council divided as follows:—

Ayes—19.

The Hon'ble Sir Gangadhar Chitnavis.
Babu S. N. Banerjea.
Raja of Mahmudabad.
Dr. T. B. Sapru.
Pandit Madan Mohan Malaviya.
Mr. S. Sastri.
„ B. N. Sarma.
Mir Asad Ali, Khan Bahadur.
Sir Dinshaw Wacha.
Mr. V. J. Patel.
Mr. M. A. Jinnah.
Sir Fazulbhoy Currimbhoy.
Rai Sitanath Ray Bahadur.
Sir M. C. Nandi.
Rai Krishna Sahay Bahadur.
Khan Bahadur Mian Muhammad Shafi.
Mr. G. S. Khaparde.
„ Rai Bahadur B. D. Shukul.
„ Mr. K. K. Chanda.

Noes—36.

His Excellency the Commander-in-Chief.
The Hon'ble Sir Claude Hill.
Sankaran Nair.
George Lowndes.
„ Thomas Holland.
William Vincent.
James Meston.
„ Arthur Anderson.
Mr. W. A. Ironside.
Sir Verney Lovett.
Mr. H. F. Howard.
„ Sir James DuBoulay.
„ Mr. A. H. Ley.
W. M. Hailey.
H. Sharp.
„ „ R. A. Mant.
„ Major-General Sir Alfred Bingley.
„ Sir Godfrey Fell.
Mr. F. C. Rose.
C. H. Kesteven.
„ D. deS. Bray.
Lieutenant-Colonel R. E. Holland.
Surgeon-General W. R. Edwards.
„ Mr. G. R. Clarke.
H. Moncrieff Smith.
C. A. Barron.
„ P. L. Moore.
M. N. Hogg.
T. Emerson.
E. H. C. Walsh.
„ C. A. Kincaid.
„ Sir John Donald.
Mr. P. J. Fagan.
J. T. Marten.
W. J. Reid.
„ W. F. Rice.

The amendment was therefore negatived.

His Excellency the President :—"That will cover Mr. Chanda's amendment* to the same effect. And, Mr. Shukul, it covers yours† also."

The Hon'ble Rai Bahadur B. D. Shukul :—"I would rather keep quiet, my Lord."

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* No. 153-A. That Part III be deleted.

† No. 154. That Part III be deleted with the exception of the proviso to clause 33 (1) (*b*) which is to tand as a separate clause.

The Hon'ble Sir William Vincent :—" My Lord, I move that clause 32, as amended by the Select Committee, do stand part of the Bill."

The Hon'ble Mr. G. S. Khaparde :—" The subject matter of this amendment, 7 P.M.

' That in clause 32 after the words ' he may ' the words ' with the concurrence of the Indian Legislative Council ' be inserted, '

was discussed, your Excellency, in connection with Part II, so I do not propose to go over the same ground. I will only ask your Excellency to put the amendment."

The Hon'ble Sir William Vincent :—" My Lord, for reasons that I have explained at some length before I cannot accept this amendment."

The motion was put and negatived.

The Hon'ble Mr. V. J. Patel :—" My Lord, I beg to withdraw the amendment which stands in my name, namely,—

' That in clause 32 after the words ' he may ' the words ' with the concurrence of the Indian Legislative Council ' be substituted. ' "

The amendment was by leave withdrawn.

The Hon'ble Mr. Kamini Kumar Chanda :—" My Lord, the amendment which stands in my name is as follows :—

' That in clause 32 for the words ' in Council ' the words ' with the consent of the Indian Legislative Council ' be substituted. '

" I would rather put it, my Lord."

His Excellency the President :—" Would you like me to put it? "

The Hon'ble Mr. Kamini Kumar Chanda :—" Yes, my Lord."

The motion was put and negatived.

The Hon'ble Rai Bahadur B. N. Sarma :—" I beg to move the amendment which stands against my name :— 7-1 P.M.

" That to clause 32 the following provisos be added :—

' Provided that no action shall be taken by the Governor General in Council, without giving the Indian Legislative Council or the Legislative Council of the province in respect of which such a notification is proposed to be made an opportunity of expressing its opinion by a resolution passed on the subject :

' Provided further that such notification shall at any time after the expiry of one year from the date thereof be withdrawn on the recommendation of the Indian Legislative Council or the Legislative Council of the province in respect of which it may have been made by a resolution passed by three-fifths of the members of either of the said Councils.' "

The motion was put and negatived.

The motion that clause 32, as amended by the Select Committee, stand part of the Bill was put and agreed to.

The Hon'ble Sir William Vincent :—" My Lord, I beg to move that clause 33, as amended by the Select Committee, do stand part of the Bill." 7-2 P.M.

The Hon'ble Mr. V. J. Patel :—" My Lord, I beg to move that in clause 33 (1) after the words ' has been or is ' the word ' actively ' and after the words ' in any scheduled offence ' the words ' connected with any anarchical or revolutionary movement ' be inserted. The clause as proposed to be amended will read thus :— 454

' Where, in the opinion of the Local Government, there are reasonable grounds for believing that any person has been or is actively concerned in such area in any scheduled offence connected with any anarchical or revolutionary movement etc., etc.'

"The amendment really consists of two parts. With regard to the first part, I invite the attention of this Council to clause 21 which has already been passed. There it is stated 'where, in the opinion of the Local Government, there are reasonable grounds for believing that any person is or has been actively concerned in any movement of the nature referred to in section 20'. Well in this clause the word 'actively' does not occur. I should not have moved this amendment if the word 'actively' was not to be found in clause 21: but anyone who compares the provisions of section 21 with section 33 can justly contend that section 33 is really wider in its scope than section 21. Therefore it is that I propose that the word 'actively' should be inserted in clause 33 also.

"With regard to the second part of my amendment, I desire that the persons to be dealt with by the Local Government under clause 33 should be persons who, in the opinion of the Local Government, have been or are concerned in any area in any scheduled offence connected with anarchical or revolutionary movements. This is merely to make the intention of the Government clear and nothing more."

7-5 P.M. **The Hon'ble Sir William Vincent:**—"My Lord, I think that the last part of the amendment which the Hon'ble Member proposes will be met by an amendment of the Schedule itself by inserting therein the words which the Hon'ble Member seeks to insert here. I am afraid, however, that I cannot accept the suggestion as to the insertion of the word 'actively' before "concerned,' as the word would be misleading. A man may not be actively concerned in a movement; but the drafting department consider—and if I may say so, with all deference, I entirely agree with them—that it is unwise and unreasonable to put in the word 'actively' before 'concerned' when we are speaking of an offence. If by any chance it could be held to exclude a person who had instigated and not otherwise taken any active part in an offence, it would be open to objection. Suppose there is a conspiracy and a man is instigating it; he ought certainly to come within this Part, and there is no necessity whatever to insert the word 'actively'. I prefer to take the wording as it is at present."

The Hon'ble Mr. V. J. Patel:—"I have nothing more to say, my Lord."

His Excellency the President:—"Do you wish the other part to be put?"

The Hon'ble Sir William Vincent:—"I am going to oppose this amendment *in toto*; I want any amendment that is made to be put in the Schedule."

The motion was put and negatived.

7-6 P.M. **The Hon'ble Mr. V. J. Patel:**—"I beg permission to withdraw the next amendment, namely,—

'That in clause 33(*1*) after the words 'the Local Government may' the words 'with the previous approval of the District and Sessions Judge of the District' be inserted.'"

The amendment was by leave withdrawn.

The Hon'ble Mr. Srinivasa Sastri:—"I beg to move;—

'That in clause 33 (*1*) after the word 'Government' where that word occurs for the second time the following be inserted:—

'shall place all the materials in its possession relating to his case before a judicial officer not below the rank of a District and Sessions Judge and take his opinion thereon. After considering such opinion the Local Government, if it is satisfied that such action is necessary,'

"This amendment, my Lord, is on all fours with an amendment to section 21 which I moved sometime ago, which has been accepted with a slight change by the Government; and I hope this will also be similarly treated."

The Hon'ble Sir William Vincent:—"I am quite prepared, my Lord, to accept this amendment in the modified form which I suggested last time on the motion to amend clause 21.

"The amendment will run as follows :—

". . . . may place all materials in its possession relating to his case before a judicial officer who is qualified for appointment to a High Court and take his opinion thereon. After considering such opinion the Local Government may if it is satisfied that such action is necessary ' "

The Hon'ble Mr. Srinivasa Sastri:—"I accept that, my Lord." 7-8 P.M.

The motion as amended was put and agreed to.

The Hon'ble Mr. G. S. Khaparde:—"My Lord, I move—

'That in clause 33 (*1*) for the words 'may make' the following words be substituted :—

'Shall lay information before a Magistrate of the 1st class having jurisdiction in the area and the said Magistrate may on being satisfied of the truth of the information by following the procedure laid down in the Criminal Procedure Code for demanding security make ' '

It has been discussed before. It may be merely put."

The motion was put and negatived.

The Hon'ble Mr. Kamini Kumar Chanda:—"I merely put this amendment, my Lord :—

'That in clause 33 (*1*) for the words 'may make' the words 'apply itself or through any officer to the investigating authority having jurisdiction in the matter' be substituted, after the word 'person' the word 'for' be inserted, and for the words 'further by order in writing direct' the words 'further apply for an order directing' be substituted.' "

The motion was put and negatived.

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I beg to withdraw the next two amendments standing in my name, namely,—

'That in sub-clause (*a*) of clause 33 (*1*) the words 'without warrant' be deleted and

'That in sub-clause (*c*) of clause 33 (*1*) for the words 'in the opinion of the Local Government has' the words '*prima facie* appears to have' be substituted.' "

The amendments were by leave withdrawn.

The Hon'ble Mr. V. J. Patel:—"I beg to move my amendment—

'That in sub-clause (*c*) of clause 33 (*1*) for the words 'prejudicial to the public safety' the words 'connected with any anarchical or revolutionary movement' be substituted.' "

The Hon'ble Sir William Vincent:—"I am prepared to accept the amendment."

The Hon'ble Mr. V. J. Patel:—"I am glad, your Excellency."

The motion was put and agreed to.

The Hon'ble Mr. V. J. Patel:—"I beg to move my amendment— 7-11 P.M.

'That in clause 33 (*3*) for the words 'use all means necessary' the words 'use all lawful means reasonably necessary' be substituted.'

I understand from what took place in connection with a similar amendment to Part II that Government will consider this amendment favourably."

The Hon'ble Sir George Lowndes:—"I accept the amendment."

The motion was put and agreed to.

The Hon'ble Mr. Kamini Kumar Chanda:—"I beg to withdraw my amendments—

'That in clause 33 (*3*) the word 'lawful' be inserted after the word 'all,' and

'That after clause 33 (*3*) the following proviso be inserted :—

'Provided that the investigating authority when ordering the arrest of any person may provide for bail and when the arrested person is produced before it may then admit him to bail and' "

The amendments were by leave withdrawn.

The motion that clause 33, as amended by the Select Committee and as further amended, stand part of the Bill was put and agreed to.

The Hon'ble Sir William Vincent :—"My Lord, I move that clause 34, as amended, by the Select Committee, and clauses 35 and 36 stand part of the Bill."

The motion was put and agreed to.

The Hon'ble Sir William Vincent :—"My Lord, I move that clause 37 do stand part of the Bill."

7-14 P.M. **The Hon'ble Mr. V. J. Patel :**—"I beg to propose my amendment—

'That in clause 37 after the words 'with fine' the words 'which may extend to one thousand rupees' be inserted.'"

The Hon'ble Sir William Vincent :—"I am prepared to accept this amendment."

The motion was put and agreed to.

The Hon'ble Rao Bahadur B. N. Sarma :—"I beg to withdraw my amendment—

'That in clause 37 after the word 'fine' the words 'amounting to one thousand rupees' be inserted.'"

The amendment was by leave withdrawn.

The Hon'ble Mr. Kamini Kumar Chanda :—"I beg to withdraw my amendment—

'That after clause 37 the following new clause be inserted :—

'37-A. When the investigating authority finds that there was no probable or reasonable cause for applying for the arrest of any person or having any place searched, it may after giving notice to and hearing the prosecution, direct that any compensation be paid to the person and such compensation shall be paid by Government :

'Provided that the receipt of such compensation by any person shall not be a bar to his right of bringing any suit for damages against any one for false and malicious prosecution which he might possess : but compensation must be taken into account in passing any decree in such suit.'"

The amendment was by leave withdrawn.

The motion that clause 37, as amended, stand part of the Bill was put and agreed to.

The Hon'ble Sir William Vincent :—"My Lord, I move that clause 38, as amended by the Select Committee, stand part of the Bill."

7-15 P.M. **The Hon'ble Mr. V. J. Patel :**—"My Lord, I move—

'That for sub-clause (*1*) of clause 38 the following be substituted :—

'38 (*1*) On the expiration of the Defence of India (Criminal Law Amendment) Act, 1915, every person in respect of whom an order under rule 3 of the Defence of India (Consolidation) Rules, 1915, was in force immediately before the expiration of that Act and who has in the opinion of the Local Government been concerned in any scheduled offence, shall be deemed to be a person resident in an area in which a notification under section 3 is in force, and the provisions of Part I shall apply to every such person accordingly, and every person who is on such expiration in confinement in accordance with the provisions of the Bengal State Prisoners Regulation, 1818, shall be deemed to be a person resident in an area in which a notification under section 32 is in force, and the provisions of Part III shall apply to every such person accordingly :

'Provided that within one month from the expiration of the Defence of India (Criminal Law Amendment) Act, 1915, the Local Government may make any order of restraint which is authorised by Part III in respect of any person who is in confinement in accordance with the provisions of the Bengal State Prisoners Regulation, 1818, and if such an order is so made, it shall be deemed to be an order made under section 26 (*3*) as made applicable by section 36, and the provisions of that Part regarding such an order shall apply accordingly.'

"My Lord, my amendment is rather lengthy, but I shall explain the position in two sentences. This is a very important amendment and I hope the

Council will consider it very carefully. As clause 38 stands at present, it is proposed that persons already under executive control under the Defence of India Act or the Bengal Prisons Regulations of 1818 shall be deemed to be persons resident in areas in which the notifications under section 32 are in force, and the provisions of Part III shall apply to such persons. They are under executive control—some for 2, some for 3, and some for 4 years. These people, I submit, should now be dealt with under Part I and not under Part III. I restrict my amendment to cases under the Defence of India Act. I know that for 100 years the Government have had the power to deprive a man of his liberty under the Regulation of 1818. I do not wish to touch that power at all, but I appeal to the Council to consider the case of those persons who have been interned under the Defence of India Act passed by this Council, and for which this Council is responsible. I say with all the emphasis that I can command, that it is high time that if Government think that these persons are concerned in any offence, anarchical or revolutionary, and now as you are enacting special tribunals without a jury without commitment proceedings, with special rules of evidence without appeal, let these people have the chance of a trial—whatever the form of that trial may be—under Part I. I do not at all touch by my amendment the case of persons in executive control under the old Regulation of 1818. My Hon'ble friend Mr. Banerjea will take care of such cases and some day move a Resolution on the subject. I am at present concerned with the case of those under executive control under an Act passed by this Council. I trust the Council will accept this amendment."

The Hon'ble Mr. G. S. Khaparde:—"The amendment which stands in my name reads thus— 7-20 P.M.

'That in the proviso to clause 38 (*1*) for the words 'may make' to the end of the proviso the words 'shall either release such person or commence proceedings under Part I' be substituted.'

I do not propose to make a speech about this amendment. My only point is that these people have been under restraint for three and four years and have been kept in various places. Now it is time that we should either try and sentence them or release them altogether. There is no use hanging on in this nondescript condition of being neither judged nor sentenced. That is all my reason for proposing this amendment standing in my name."

The Hon'ble Sir William Vincent:—"My Lord, the view of the framers of the Report in regard to this question was as follows:—

'There are, however, a limited class of persons, namely, those who have been involved in the troubles which have been described who constitute a danger not contingent but actual. Special and immediate provision is required for their case.'

"The authors go on to discuss individual cases such as Rash Behari Basu

The Hon'ble Mr. V. J. Patel:—"What page?"

The Hon'ble Sir William Vincent:—"Paragraph 196. 7-21 P.M.

"Finally they say:—

'Assuming, however, that it is not desired to continue to deal with these men under the Regulation, we ought to suggest an alternative.'

"They conclude thus:—

'Lastly, it may be that a few of those now merely interned and some of the convicts who will be released may require some control. At any rate, it is to be deprecated that the persons interned should have the assurance that on the expiry of the Defence of India Act they will at once and all at the same moment be immune from all restriction. They should be liberated gradually.

'It seems to us that the simplest device is to provide that in respect of acts committed before the Defence of India Act expires (or an earlier date if preferred) and danger apprehended by reason of such acts in the future, it should be lawful to proceed against any person under any of the provisions which we have outlined without any modification. In other words the new law is to be deemed to be operative for that purpose immediately.'

"The Hon'ble Mr. Khaparde now suggests that they should be released at once or put on trial. From figures which have been furnished to the Council and from information given by Mr. Banerjea, I think it is apparent that a great many of these men have been released. It is only a few of the more dangerous characters that are still under restraint. In fact that was an argument that was used just now against the Government, for it was said that so few of these men are still under restraint that you really have no trouble in Bengal. I use the argument for a slightly different purpose, namely, to show that the Government have treated these men with every consideration, and that there is no probability that Government will seek to maintain restraints on any man if these restrictions can be removed without danger to the body politic. The power must, however, be retained in the public interest. The effect of the amendment would however be to make Part I, which is the punitive part of the Bill, apply to persons upon whom restrictions have been placed by the Defence of India Act. But if we had evidence to prosecute these people before a court of law, if the witnesses were ready to come forward, if they had not been terrorised by methods to which I have frequently adverted in this Council, we should have prosecuted them long ago under the Defence of India Act; and to suggest that when the Defence of India Act expires we should prosecute them under Part I of this Act is a proposal of no practical value. An examination of the amendment which has been put forward by the Hon'ble Member did lead me to a very careful consideration of the provision that is made in regard to these men, and it does appear that the application of Part III to these persons interned under the Defence of India Act is further than we need go. If the Hon'ble Member—I merely throw it out as a suggestion—if the Hon'ble Member likes to substitute in the amendment for the words 'section 3,' 'section 20' and for the words 'Part I' the words 'Part II,' I should be quite prepared to accept the modification, and this, although not giving him what he requires, would be making the law distinctly more lenient in respect of these persons. This proposal would also be, I think, fairer to the persons now interned, although the Bill as it stands reproduces what was contemplated by the framers of the Report. I do not know if I have made myself quite plain to the Hon'ble Member, but I will read it if necessary."

7-26 P.M. **The Hon'ble Mr. V. J. Patel:**—"I have understood it. Your Excellency, I must say that I feel very keenly on this question. The Hon'ble the Home Member has read to this Council the relevant portion of the Report of the Rowlatt Committee to show that the Committee holds that these persons should be dealt with under the provisions of Part III. He suggests that the proposed provisions of clause 38 are justified by the recommendations of the Rowlatt Committee. My reading is otherwise. I shall read to the Council only two or three lines from the Report;

'It seems to us that the simplest device is to provide that in respect of acts committed before the Defence of India Act expires (or an earlier date if preferred) and danger apprehended by reason of such acts in the future, it should be lawful to proceed against any person under any of the provisions which we have outlined without modification. In other words, the new law is to be deemed to be operative for that purpose immediately.'

"What the Committee clearly says is that they are to be dealt with under the new law

The Hon'ble Sir William Vincent:—"May I interrupt the Hon'ble Member for one minute? May I ask the Hon'ble Member to read the preceding paragraph? I think I did read it."

The Hon'ble Mr. V. J. Patel:—'Lastly, it may be that a few of those now merely interned and some of the convicts who will be released may require some control. At any rate, it is to be deprecated that the persons interned should have the assurance that on the expiry of the Defence of India Act they will at once and all at the same moment be immune from all restriction. They should be liberated gradually.'

"My Lord, I do not at all suggest that they should be liberated. I say put them on trial under Part I. I do not say that they should be liberated all at once. The scheme of the Rowlatt Committee's Report in regard to

these legislative proposals is this. They first suggest punitive measures. Then they go on to suggest preventive measures, and, finally, under the heading 'Provision for existing danger,' they suggest the treatment of existing offenders. So it is entirely a separate Part and it clearly says that 'the new law is to be deemed to be operative for that purpose immediately.' So there is nothing to show that the Committee suggests that Part III should be made applicable to them. We can apply Part I, Part II or III. However, I stand to lose what little is offered if I were to refuse it, and therefore I accept the suggestion."

The Hon'ble Mr. G. S. Khaparde:—"If your Excellency will permit me, I should like to add a word, because my amendment comes under this." 7-30 P.M.

His Excellency the President:—"You accepted what Sir William Vincent said?"

The Hon'ble Mr. G. S. Khaparde:—"Yes, I accept it, but there is something else I wish to say, and that is that after four years we cannot collect the evidence which is needed. With this observation I accept it."

His Excellency the President:—"The amendment will then read:—

'That for sub-clause (*1*) of clause 38 the following be substituted:—

'38 (*1*). On the expiration of the Defence of India (Criminal Law Amendment) Act, 1915, every person in respect of whom an order under rule 3 of the Defence of India (Consolidation) Rules, 1915, was in force immediately before the expiration of that Act and who has in the opinion of the Local Government been concerned in any scheduled offence, shall be deemed to be a person resident in an area in which a notification under section 20 is in force and the provisions of Part II shall apply to every such person accordingly, and every person who is on such expiration in confinement in accordance with the provisions of the Bengal State Prisoners Regulation, 1818, shall be deemed to be a person resident in an area in which a notification under section 32 is in force, and the provisions of Part III shall apply to every such person accordingly:

'Provided that within one month from the expiration of the Defence of India (Criminal Law Amendment) Act, 1915, the Local Government may make any order of restraint which is authorised by Part III in respect of any person who is in confinement in accordance with the provisions of the Bengal State Prisoners Regulation, 1818, and if such an order is so made, it shall be deemed to be an order made under section 26 (*3*) as made applicable by section 36, and the provisions of that Part regarding such an order shall apply accordingly.'"

The motion was put and agreed to.

The motion that clause 38 of the Bill, as amended by the Select Committee, and as further amended, stand part of the Bill was put and agreed to.

The Hon'ble Sir William Vincent:—"I move that clause 39 do stand part of the Bill."

The Hon'ble Mr. V. J. Patel:—"I beg to move that in clause 39 for the words 'when a notification issued under section 3 or section 20 or section 32 is cancelled' the following words be substituted:— 7-32 P.M.

'The Governor General in Council may, of his own accord and shall, on the recommendation of the Indian Legislative Council, cancel any notification issued under section 3, or section 20 or section 32 and'

I know that the amendment stands no chance and I do not wish to waste the time of the Council by making any speech."

The Hon'ble Sir William Vincent:—"Here again the Hon'ble Member seeks to vest the Legislative Council with authority which is in my judgment properly vested in the executive Government, and which is necessary for the discharge of the responsibility of the Government of India to the Secretary of State, and I am afraid I must for that reason refuse to accept this amendment." 447

The motion was put and negatived.

The motion that clause 39 stand part of the Bill was put and agreed to.

The Hon'ble Sir William Vincent:—"My Lord, I move that clause 40, as amended by the Select Committee, stand part of the Bill."

The motion was put and agreed to.

The Hon'ble Sir William Vincent:—"I beg to move that clause 41 stand part of the Bill."

7-34 P.M. **The Hon'ble Mr. G. S. Khaparde**:—"My Lord, section 41 is a section about which I spoke a good deal when this Bill was introduced, and I said it was beyond our competence to pass it, especially that portion of it which says no civil suit shall lie, so I do not propose to go over the same ground now, but one part of it has been ruled against by the Privy Council. Then on the next question I wish to argue under it. I should like to have your Excellency's ruling before I do so. The amendment reads thus :—

'That for clause 41 the following clause be substituted :—

'In all trials, inquiries and investigations under this Act, the question whether the person charged and the offence alleged is or is not connected with an anarchical or revolutionary movement shall be a question of fact to be determined by the Court or the investigating authority, as the case may be.'

"This is a point which was argued before and, I believe, it has been also argued to-day, and so far as the opinions of this Hon'ble Council were taken, they have been against it. If your Excellency thinks it is open to me to argue it, I shall say a few words, otherwise I shall leave it."

7-36 P.M. **The Hon'ble Sir George Lowndes**:—"I submit, my Lord, that any discussion of this amendment must be out of order ; the question has been decided by the Council already. We had exactly the same amendments with regard to each particular and we have now the same question over again in general terms."

His Excellency the President:—"I think you felt rather doubtful about it, Mr. Khaparde ; I agree with you, it is out of order."

The Hon'ble Mr. G. S. Khaparde:—"But the first part of it remains, the civil suit which has been directly ruled against by the Privy Council."

His Excellency the President:—"But there is no amendment on that."

The Hon'ble Sir William Vincent:—"My Lord, that is amendment No. 179 ; I think there is some confusion in the mind of the Hon'ble Member ; that is coming on later."

His Excellency the President:—"That is Mr. Chanda's amendment."

7-38 P.M. **The Hon'ble Mr. V. J. Patel**:—"I beg to move that in clause 41 after the words 'in any Court' the following words be inserted :—

'But the High Court shall have power to revise any order passed under section 26 or section 36 on the application by or on behalf of the person aggrieved made within 15 days of the date of the said order.'

"My Lord, we have now enacted and made the provisions of Chapters II and III, we have rejected suggestions regarding the rules of evidence, regarding the right of the accused to be represented by a pleader and even the right of the accused to appear personally. We have rejected the suggestion that the Local Government should have no power to appoint the investigating authority. Substantially therefore the provisions regarding the investigating authority remain as they are. The report of the investigating authority, the

finding of the investigating authority, is also not to be binding on Government! The amendment proposed is intended to give to persons dealt with either under Part II or Part III, not in respect of interim orders but when the orders are made final, either under section 26 or 36 to move the High Court in revision. This is the last chance I submit should be given to these persons and I trust the Council will support me."

The Hon'ble Sir William Vincent:—"This amendment strikes at the root of the Bill and would revive a matter which has been decided by the Council more than once. I have repeatedly tried, and at times I have thought I had succeeded in making it clear that the responsibility for these orders rests with the executive and not with the judiciary. Our view on the question may be right or it may be wrong, but it was at least clear. I wish to point out further that if we sent a case in which restrictions had been imposed under the preventive sections up to the High Court, this procedure would necessarily involve the publication of the whole of the information received and the change of the procedure from executive to judicial. I believe also myself that the judicial authorities would be the first to object to being called upon to decide questions after an investigation of this character. 7-40 P.M.

"I must certainly oppose this amendment."

The Hon'ble Mr. V. J. Patel:—"I now clearly understand the position of Government."

The motion was put and negatived.

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I beg to move—

'That in clause 41 the words 'suit or' and the words 'or other legal proceedings' be deleted.'

"The clause will then stand thus:—

'No order under this Act shall be called in question in any Court and no prosecution shall lie against any person for anything which is in good faith done or intended to be done under this Act.'

"I can quite understand that if a man does anything in good faith he ought not to be prosecuted, but if by mistake he does injury to me, I do not see why he should be protected in case I wish to bring a suit against him for damages."

The Hon'ble Mr. G. S. Khaparde rose.

The Hon'ble Sir George Lowndes:—"Might I intervene for one moment. I would earnestly ask my Hon'ble friend at this late hour not to raise a purely legal argument on the Moment case, which I know he is burning to do. I am quite prepared of course to meet my Hon'ble friend and argue it at length with him, but it would be useless to do so now."

The Hon'ble Mr. G. S. Khaparde:—"I do not want to argue that matter. I only wish to bring it up now so that your Excellency may rule upon it; and your Excellency will have this consideration that this is a matter upon which the Privy Council has decided. In the Loreburn Committee's Report which I have already read out to the Council they say: 'After the passing of that Act, the Government of India have gone on framing Acts directly contrary to that ruling. Something like 30 Acts have been passed since.' The question is whether it is desirable to have a thirty-first one. That is the question which I would wish to put." 7-42 P.M.

His Excellency the President:—"I do not propose to rule on the subject: I propose to put it to the Council."

The Hon'ble Mr. Chanda's motion was put and negatived.

The motion that clause 41 stand part of the Bill was put and agreed to.

The Hon'ble Sir William Vincent:—"I move that clause 42 stand part of the Bill."

The motion was put and agreed to.

The Hon'ble Sir William Vincent:—"My Lord, I move that the Schedule, as amended by the Select Committee, do stand part of the Bill."

7-45 P.M. **The Hon'ble Mr. V. J. Patel:**—"May it please your Excellency, I beg to move—

'That for clause (*l*) of the Schedule the following be substituted :—

'(*l*) Any offence under the following sections of the Indian Penal Code, namely :—sections 121, 121-A, 122, 125, 124, 131 and 132.'

This is one amendment on which I feel certain I shall be able to convince the Government."

The Hon'ble Sir William Vincent:—"I will save the Hon'ble Member the trouble of convincing me; the very sight of the amendment has done it. I am quite prepared to accept it."

The Hon'ble Mr. V. J. Patel:—"I am very glad, my Lord."

The motion was put and agreed to.

The Hon'ble Mr. V. J. Patel:—"My Lord, I beg to move—

'That in clause (2) of the Schedule for the words 'in the opinion of the Government' the words 'in the opinion of the Court or the investigating authority concerned' be substituted.'

I understand some change is going to be proposed by Government in connection with this clause, and I should like to hear from the Hon'ble the Home Member what that change would be."

7-46 P.M. **The Hon'ble Sir George Lowndes:**—"My Lord, no change is proposed under this amendment, but I propose to accept *sub modo* the next amendment of the Hon'ble Mr. Sarma. Perhaps it might be convenient if I state what I am prepared to accept. I am prepared to insert the words Mr. Sarma wants, namely, 'anarchical or revolutionary' in the Schedule instead of the words 'endangering the safety of the State.'

The Hon'ble Mr. Kamini Kumar Chanda:—"I rise to a point of order; the Hon'ble Mr. Sarma's amendment is not before the Council now."

The Hon'ble Sir George Lowndes:—"I know that, but I am only informing the Hon'ble Mr. Patel at his particular request what change I am prepared to make."

The Hon'ble Mr. V. J. Patel:—"It does not help me in the least, your Excellency. I beg to move :—

'That in clause (2) of the Schedule for the words 'in the opinion of the Government' the words 'in the opinion of the Court or the investigating authority concerned' be substituted.'

"My point, your Excellency, is this. Let the Local Government, if it is satisfied that the person is concerned in any movement of a revolutionary character, take action either under Chapter II or under Chapter III. Let the Local Government lay the information before the investigating authority or the Chief Justice. But what I want is that once the Court or the investigating authority is seized of the case, then it should be for the Court or the authority to say whether in its opinion the man is guilty of the offence, and also that it is connected with a revolutionary or anarchical movement."

The Hon'ble Sir William Vincent:—"My Lord, the Hon'ble Member is moving under a very thin disguise really an amendment which has already been negatived by this Council. But if I may address the Council for two minutes I think I can show that his present proposal is utterly impossible. Take, for instance, Part I. Part I says 'If the Governor General in Council is satisfied that, in the whole or any part of British India, anarchical or revolutionary movements are being promoted, and that scheduled offences are prevalent, etc.' At that time there will be no Court or investigating authority appointed at all, and if you are to wait until that authority is appointed before you can say what a scheduled offence is, Part I could never be introduced; and the same applies to Parts II and III. So that if you substitute in the Schedule the words 'Court or investigating authority' for the words 'Local Government,' you render the whole Act impossible of application." 7-48 P.M.

The Hon'ble Mr. V. J. Patel:—"I do not think it is necessary for me to meet the argument for it will serve no useful purpose."

The Hon'ble Sir William Vincent:—"I should be glad to know if it is possible to meet the point I made, my Lord."

The motion was put and negatived.

The Hon'ble Rao Bahadur B. N. Sarma:—"My Lord, I beg to move— 7-50 P.M.

'That in clause (*2*) of the Schedule after the words 'with any' the words 'anarchical or revolutionary' be inserted.'

Then the clause would stand—

'(*2*) Any of the following offences, if, in the opinion of Government, such offence is connected with any anarchical or revolutionary movement endangering the safety of the State:—

The Hon'ble Sir George Lowndes:—"My Lord, I am quite willing to accept the insertion of the words 'any anarchical or revolutionary movement,' and I hope that will be sufficient for my Hon'ble friend without keeping in the words 'endangering the safety of the State.' It is perfectly obvious, if I may say so, that an anarchical or revolutionary movement must endanger the safety of the State; it is really implied in the words 'anarchical or revolutionary movement.' Therefore the words 'endangering the safety of the State' should surely go out."

The Hon'ble Rao Bahadur B. N. Sarma:—"My Lord, we have not described what is a revolutionary movement and, if there is no harm in keeping in the words 'endangering the safety of the State,' I should be much obliged."

The Hon'ble Sir George Lowndes:—"I will withdraw my offer if the Hon'ble Member does not wish to accept it."

The Hon'ble Rao Bahadur B. N. Sarma:—"I will have the Hon'ble Member's amendment,—that the words 'endangering the safety of the State' may go out and the words 'anarchical or revolutionary' be inserted in the clause."

The amended motion was put and agreed to.

The Hon'ble Mr. G. S. Khaparde:—"My Lord, my amendment is as follows:— 7-51 P.M.

'That in clause 2 (*a*) of the Schedule the figures and letter '124-A' be deleted.'

"My idea in putting forward this amendment is that the offence of sedition stands on a totally different basis from the other offences included in Chapter 6 of the Indian Penal Code. At this late hour of the evening I do not propose to go into an analysis of all the offences included there, but the whole thing

admits of being put into a few words. This section 124-A, really in English law at one time, formed part of the law of sedition, libel, slander and defamation. Since then it has become latterly a part of the law of treason, and it has become a little more complicated in that way. But, however, that may be, it is one of those offences that are neither anarchical nor revolutionary. Sedition means that a man in speaking speaks a little too much and sometimes a word escapes him; or in writing he writes one sentence more. And therefore, I am anxious that these people, these speakers and writers, might not be brought under the provisions of this Act. This is my object in proposing this amendment."

7-53 P.M. **The Hon'ble Khan Bahadur Mian Muhammad Shafi :—** "My Lord, may I be permitted to point out that the offence under section 124-A does not come within the purview of this section unless it is connected with an anarchical or revolutionary movement. The Schedule says—

'Any of the following offences, if, in the opinion of Government, such offence is connected with an anarchical or revolutionary movement.'

So that an ordinary article or speech or writing of the kind my Hon'ble friend is referring to will not come within the purview of this sub-clause unless it is connected with an anarchical or revolutionary movement."

The Hon'ble Rao Bahadur B. N. Sarma :— "May I point out that there is not much safety, because it is only the opinion of the Local Government which determines the existence of the connection and not the finding of the judges?"

7-54 P.M. **The Hon'ble Mr. V. J. Patel :—** "My Lord, I rise to give my cordial support to this very important amendment placed for the consideration of this Council, at this late hour, by my Hon'ble friend Mr. Khaparde. The question is really very, very serious. If this Council will see the next amendment which stands in my name, it says :—

'That in clause 2 (*a*) of the Schedule the figures and letters '124-A, 153-A,' be deleted.'

"My Hon'ble friend Mr. Khaparde wants the deletion of one section, 124-A. I want the deletion of two sections, 124-A and 153-A. My reasons are these. This is again a matter, a most essential matter, in which the Government goes beyond the recommendations of the Rowlatt Committee. As I pointed out when discussing Part I, there are already provisions in the Criminal Law Amendment Act similar to the provisions in Part I; perhaps it was for the insertion of these two sections that Government intended to undertake this legislation. It is very difficult to understand why Government should go out of its way to insert these two sections, for which the Rowlatt Committee makes no recommendation. My Lord, section 124-A, if included in this Schedule, will kill all political agitation in the country; and I respectfully submit that no case whatsoever has been made out by Government to include those two sections, in doing which you go beyond the recommendations of the Rowlatt Committee. I invite the attention of this Council to page 147 of the Rowlatt Committee's Report, paragraph 186, last but one sub-paragraph :—

'The cases to be tried subject to the provisions above sketched out will be such as are ordered to be so tried by Government, the power to make such orders being limited to certain classes of offences to be named in a Schedule. This was the scheme of the Criminal Law Amendment Act, 1908, the Schedule to which might be adopted.'

And what is that Schedule, I pray? My Lord, if you will turn to the Schedule attached to the Criminal Law Amendment Act, you will find that those are the very sections which do not find a place there—the only two sections—and I am surprised at their inclusion in this Schedule. I do not for a moment suggest that your Excellency's Government have the remotest idea of killing constitutional political agitation in the country; but the effect of the insertion of these two sections—I warn my non-official colleagues—will be what I say, namely, the killing of political agitation in this country. I do not wish to attribute any

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motives, but I submit that unless there is a clear and satisfactory explanation on the part of Government for going beyond the recommendations of the Rowlatt Committee, I am absolutely certain people will put the construction which I have suggested."

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I have a similar amendment* in my name and I associate myself with the eloquent remarks of the Hon'ble Mr. Patel." 7-58 P.M.

The Hon'ble Sir Verney Lovett:—"My Lord, the last sentence of the clause to which the Hon'ble Mr. Patel referred runs thus:

'This was the scheme of the Criminal Law Amendment Act, 1908, the Schedule to which might be adopted.'

"We did not say 'should be adopted,' we said 'might be adopted.' We threw it out as a suggestion. That is all I have to say, my Lord."

The Hon'ble Sir William Vincent:—"My Lord, there has been what I can only describe as an amazing mis-statement of the intentions of Government in enacting Part I of this Bill. It is suggested that the Government deliberately propose to enact Part I of the Bill in order to introduce these two sections. . .

The Hon'ble Mr. V. J. Patel:—"I beg pardon. I rise to a point of order. I never said the Government deliberately inserted them. I have all along said that it is likely to be interpreted as such unless there is a satisfactory explanation.

The Hon'ble Sir William Vincent:—"My recollection is, as I said, that the insinuation of the Hon'ble Member was what I have said, namely, that the Government did this deliberately.

The Hon'ble Mr. V. J. Patel:—"I am sorry for the recollection of the Hon'ble Member."

The Hon'ble Sir William Vincent:—"If I am wrong, I can only regret it; but I have a clear recollection of the same thing being said in connection with Part I. At any rate, whether I am right or wrong in that, as apparently there is room for misapprehension on the point, let me assure the Council that there is no ground at all for any such apprehension. I tried to explain very fully the reasons which led us to make Part I of the Bill, and I think it is generally admitted that we depart there very considerably from the Act of 1908 in many matters. 7-59 P.M.

"I had also hoped we had taken every step to reassure the public and the members of this Council that this Bill will not and cannot be used for the suppression of political agitation. It certainly shall never be so used with the consent of any of the members of the Government of India. I do not believe it can possibly be so used; but the real question before the Council is, whether sections 124-A and 153-A should remain in the Schedule, when offences under these sections are directly connected or when connected with a revolutionary or anarchical movement whether an offender under these sections is entitled to any more consideration than an offender under the other sections which are mentioned in the Schedule. Section 124-A deals with a person who brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards His Majesty or the Government; and section 153-A deals with offences promoting ill-feeling between different races; but the offences only come within the purview of this Schedule when they are connected with a revolutionary or anarchical movement and I can myself see no reason for excluding either of these sections from the Schedule."

* That in clause 2 (*a*) of Schedule the figures and letters "124-A" and "153-A" be deleted.

The Hon'ble Pandit Madan Mohan Malaviya :—" My Lord neither the Hon'ble Sir Verney Lovett nor the Home Member have answered the objection which has been raised by the Hon'ble Mr. Patel to the inclusion of sections 124-A and 153-A in the Schedule. My Lord, as more than one official member has referred to the proceedings of the Select Committee, I hope I also may be permitted to refer to them to this extent, that it was I who suggested the exclusion of these two sections from the first part of the Schedule as it stood in the Bill as it was introduced, namely, offences against the State.

The Hon'ble Mr. V. J. Patel :—" I also suggested it."

The Hon'ble Pandit Madan Mohan Malaviya :—" Yes, I do not want to claim credit for myself alone; I was going to point to something else, and it was that that suggestion was not adopted, but the two offences were included after some consideration by the Government in the second part of the Schedule.

The Hon'ble Sir William Vincent :—" May I correct my Hon'ble friend? Section 153-A was always in the second Part of the Schedule though section 124-A was in the first Part."

8-2 P.M. **The Hon'ble Pandit Madan Mohan Malaviya** :—" Yes, I thank the Hon'ble Member. Now, the position with regard to these two sections is very clear. All that the Hon'ble Sir Verney Lovett has said is that the Rowlatt Committee has suggested that the Schedule to the Act of 1908 might be adopted. He has not told us that there is anything in the Rowlatt Committee's Report which would support the inclusion of the two sections under consideration in the Schedule. The Hon'ble the Home Member has said that if an offence which falls under section 124-A or 153-A is in the opinion of the Local Government connected with revolutionary or anarchical movements it should be triable under Part I. Now, my Lord, the whole trouble arises from the fact that the question whether an offence under section 124-A or 153-A is or is not connected with a revolutionary or anarchical movement is to be determined not judicially but merely by the opinion of the executive Government. It is a very serious matter to deprive an individual of the constitutional safeguards of life and liberty by the judgment of an executive Government, and I therefore very strongly support the amendment of Mr. Patel that these two sections should be excluded from the Schedule. My Lord, the result will not be that persons who may be guilty of these offences in connection with revolutionary movements will go unpunished. The law can get hold of them if they have been directly or indirectly connected with revolutionary or anarchical movements. If, on the other hand, the Government has not evidence enough which it can put before a judicial court to establish a connection of the offence under trial the absence of such evidence, the want of sufficient evidence, should not be made good by the opinion of the executive Government arrived at upon evidence which is not sufficient to be put before a law court. For these reasons, my Lord, I strongly support the proposal, and though it seems hopeless to expect it, it is to be very much wished that the Government will see their way to adopt at least this amendment. This will remove a great deal of apprehension which has been aroused in the minds of the people. My Lord, in this country as in other countries the determination of the question of whether a speech or writing is seditious is one of the most difficult matters which comes before the courts. And situated as we are in this country there are special reasons to apprehend that when an executive officer of Government considers a particular individual particularly objectionable, any speech made by him, any article written by him in an area to which the Act has been extended, may be regarded, in the opinion of the executive Government, to be connected with any revolutionary or anarchical crime that may happen to exist in any part of the province. Criticisms of the policy and measures of Government, criticisms of the vagaries of administrative officers, criticisms of the defects of the administration are abundant, unfortunately too abundant; and owing to the fact that the governing class belong to another country, to another race, there is always the danger of a man being charged, without the slightest

justification in fact, with exciting feelings, against Government, when he is criticising the measures of the administration with the sole desire of having the administration improved. If there is strong virile criticism of the defects of Government in any province at a time when in some parts of it, a few misguided individuals might be indulging in ideas of anarchical or revolutionary movements, the individual who has been criticising the measures of Government with the honestest of motives, with absolutely no idea of suggesting either the subversion or overthrow of Government, with the sole desire of making an unholy system of administration, satisfactory, that individual will run the risk of being hauled up by the opinion of an executive Government, of being tried by a tribunal under Part I and of being deprived of the safeguards which the constitution has hitherto provided.

"There is also another class of cases which may fall under section 153-A. Owing to the great ignorance which prevails among the vast section of the people, there are differences easily excited among Hindus and Muhammadans, and other classes of His Majesty's subjects living in this country. There may be some unfortunate individuals who may have started the trouble, and that trouble may have no connection with any revolutionary or anarchical movement. But if at the same time there should happen to be in the part of the province in which this activity may be going on some writing or speaking in connection with these unfortunate religious disputes, the result will be disastrous to those individuals who may have been writing about these matters without the remotest intention of encouraging revolutionary or anarchical movements. For these reasons, my Lord, the inclusion of these two sections in the Schedule is particularly dangerous, and it is much to be wished that Government may yet see their way to exclude the two sections from the Schedule."

The Hon'ble Mr. Srinivasa Sastri:—"My Lord, I beg to support this amendment and to say just one word why I support it. Throughout this discussion whenever non-official criticism has been sharp it has been said by the spokesmen of the Government that this distasteful business has been undertaken by them because the whole of this troublesome question was referred to great experts, and they were bound to accept more or less the opinion of this expert body and act on their advice. 8-10 P.M.

"In support of this every important section and paragraph of the Rowlatt Committee have been quoted, and whenever a certain provision was stigmatised as being very stringent it was put to us that it did not go beyond the recommendations of the Rowlatt Committee. Every anxiety was shown hitherto to make it clear to us that even the widest powers taken will fall within the limits laid down by the Rowlatt Committee. Why in regard to these two sections they have gone beyond the recommendations of the Rowlatt Committee they have not made clear although directly asked. The only thing that I have heard, and that is a very inadequate explanation, is that 'might' is very different from 'should'. That is nothing whatever. It does not touch the matter. I should like some light on this point. Sections 124-A and 153-A are sections which to all political workers are matters of constant dread. I say frankly in the course of these proceedings that Government if it wants to establish absolutely beyond all doubt that this Act will not apply, either by themselves, their successors or their subordinates, to offences under sections 124-A or 153-A with which political workers are constantly concerned, if they want to make that point clear it can only be by the exclusion of these two sections. At this late hour I have not the slightest desire to detain the Council at length, but I wish to associate myself heartily with the observations that have fallen from my Indian colleague that there is a great apprehension in the public mind that this Bill, when it becomes law, will have the effect of stifling public life or at any rate of creating stagnation therein. I believe that much of the agitation which your Excellency's Government is witnessing is prompted by that apprehension and the Government is bound to take note of it. It may be that it is exaggerated because what is unknown, what is to come is likely to be magnified in the largest proportions, but all the same there is this apprehension and it has found expression in this Council Chamber. It has found emphatic expression outside the Council and I beg your Excellency's Government to take cognisance

of this apprehension and to remove it by not including these two sections in the Schedule of the Bill."

813 P.M **The Hon'ble Mr. V. J. Patel**:—"I have nothing more to add, your Excellency."

His Excellency the President:—"I will take Mr. Patel's amendment first. Would it not be convenient to put one amendment instead of three?"

The Hon'ble Mr. G. S. Khaparde:—"I have no objection."

The Hon'ble Mr. Patel's motion was put and the Council divided as follows:—

Ayes—19.	*Noes—34.*
The Hon'ble Sir Gangadhar Chitnavis.	His Excellency the Commander-in-Chief.
Mr. S. N. Banerjea.	The Hon'ble Sir Claude Hill.
Raja of Mahmudabad.	" Sir Sankaran Nair.
Dr. Tej Bahadur Sapru.	" Sir George Lowndes.
Pandit M. M. Malaviya.	" Sir Thomas Holland.
Mr. S. Sastri.	" Sir William Vincent.
Mr. B. N. Sarma.	" Sir James Meston.
Mir Asad Ali, Khan Bahadur.	" Sir Arthur Anderson.
Sir Dinshaw Wacha.	" Sir Verney Lovett.
Mr. V. J. Patel.	" Mr. H. F. Howard.
Mr. M. A. Jinnah.	" Sir James DuBoulay.
Sir Fazulbhoy Currimbhoy.	" Mr. A. H. Ley.
Maharaja Sir M. C. Nandi.	" Mr. W. M. Hailey.
Rai Krishna Sahay Bahadur.	" Mr. H. Sharp.
Khan Bahadur Allahando Shah.	" Mr. R. A. Mant.
Khan Bahadur Mian Muhammad Shafi.	" Major-Genl. Sir Alfred Bingley.
Mr. G. S. Khaparde.	" Sir Godfrey Fell.
Rai B. D. Shukul Bahadur.	" Mr. F. C. Rose.
Mr. K. K. Chanda.	" Mr. C. H. Kesteven.
	" Mr. D. de S. Bray.
	" Lieut.-Colonel R. E. Holland.
	" Surgeon Genl. W. R. Edwards.
	" Mr. G. R. Clarke.
	" Mr. H. Moncrieff Smith.
	" Mr. C. A. Barron.
	" Mr. P. L. Moore.
	" Mr. T. Emerson.
	" Mr. E. H. C. Walsh.
	" Mr. C. A. Kincaid.
	" Sir John Donald.
	" Mr. P. J. Fagan.
	" Mr. T. J. Martin.
	" Mr. W. J. Reid.
	" Mr. W. F. Rice.

The amendment was therefore negatived.

The motion that the Schedule of the Bill, as amended by the Select Committee, and as further amended, stand part of the Bill was put and agreed to.

1956

SGPI Delhi—375 LD—11-4-19—80

4-69

Extract from the Proceedings of the Indian Legislative Council assembled under the provisions of the Government of India Act, 1915. (5 & 6 Geo. V, Ch. 61.)

The Council met at the Council Chamber, Imperial Secretariat, Delhi, on Tuesday, the 18th March, 1919.

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CRIMINAL LAW (EMERGENCY POWERS) BILL—*concld.*

The Hon'ble Sir William Vincent :—" My Lord, I beg to move that in the proviso to sub-clause (*1*) of clause 39 of the Bill to cope with anarchical and revolutionary crime as amended, after the words ' the Local Government may ' the following words be inserted, namely :— 11-54 A.M.

' Subject to the conditions prescribed in the first proviso to sub-section (*3*) of section 27 as made applicable by section 37.'

" This is really a consequential amendment to one moved by the Hon'ble Mr. Shafi on Friday last to clause 27. His amendment provided that Government issue a draft order to the person concerned likely to be affected by an order under section 37 (*3*) before the order was made final. In accepting a later amendment from the Hon'ble Mr. Patel of clause 39 I forgot I had accepted the previous amendment of the Hon'ble Mr. Shafi. The result was that an order might, as the Bill stands, be made under section 39 without giving the person affected by the order an opportunity of showing cause. I am quite sure that the Council will agree to the introduction of a consequential amendment of the kind now proposed, which really is in favour of the person affected by the order. I do not think I need add any arguments at this stage in favour of it."

The motion was put and agreed to.

The Hon'ble Sir William Vincent :—" My Lord, the second amendment which I now move is a consequential amendment of exactly the same nature as the one previously moved in sub-clause (*2*) of clause 39. I move that in the proviso to sub-clause (*2*) of clause 39 after the words ' the Local Government may ' the following words be inserted, namely :—

' Subject to the conditions prescribed in the first proviso to sub-section (*3*) of section 27.'

" The reasons for this amendment are similar to those which I have already given."

The motion was put and agreed to.

The Hon'ble Sir George Lowndes :—" My Lord, it is usual to call attention to any small drafting changes made in a Bill, and it is not usual to insist that the amendments should be moved. I think if that is the sense of the Council I need only go through them and give any explanations that are called for. 11-56 P.M.

" In clause 7 there has been a slight alteration merely to make the meaning clearer. Instead of the word ' they ' we have put in the words the ' said provision ' and instead of ' therein ' ' of this Part.' Then coming to clause 17 we have put in the word ' section ' before 402. It is merely more correct drafting. Similarly in clauses 22, 35, 36, 38 (*1*), 41 (*2*), we have inserted words to show that it is the sub-section so and so of section so and so. In clause 28 we have struck out the words ' the provisions of ' and left ' made under.' The words ' under the provisions of ' got in *per incuriam*. In the proviso to clause 41 (*2*) this Council has extended the period of detention to 21 days. Referring back to clause 25 the Council will find that there are two different

periods mentioned, namely, 7 and 15 days. It is obvious that the intention was to refer to the longer period of the two. We have, therefore, inserted 'maximum' before 'period.' That is to say the 15 days will be extended to 21.

"If any Hon'ble Member wishes me to move the amendments formally I will do so, but it is usual to accept them without a formal motion."

11-59 P.M. **The Hon'ble Sir William Vincent:**—"My Lord, the Council will remember that on the last occasion when the Bill was under discussion certain amendments were accepted in clause 19, I think, by the Hon'ble Mr. Chanda and in 26 by the Hon'ble Mr. Patel. If Hon'ble Members will read clause 19 they will see the manner in which effect has been given to the decision of Council. The Hon'ble Mr. Chanda has examined the amendment as now drafted and is satisfied that effect has been given to what he desires. Similarly, as to clause 26, there is a proviso (*c*) which embodies the modification proposed by the Hon'ble Mr Patel in amendment No. 112* at the last debate. Sub-clause (*5*) also embodies another amendment of his. I understand from him also that these amendments are in accordance with his wishes and they are certainly in accordance with the decision of the Council. There is no question of moving them because they have been passed. I merely mention them as I thought the Council would like to know that the Hon'ble Members have approved of the amendments. Having done this, my Lord, I think it is my duty to turn to the merits of the Bill and to move that the Bill to cope with anarchical and revolutionary crime as amended be passed.

"My Lord, in making this motion, I must at the outset express my great regret that in spite of the modifications which we have made in this Bill in our attempt to meet the wishes of non-official members, we have not been able to secure more support for this measure. But I think that most of the non-official members here will admit that the attitude of the Government in this matter has not been unreasonable, and that they have done their best to meet them in introducing important modifications in the Bill. At the same time, I quite realise the feelings of many Hon'ble Members in regard to this measure. I appreciate the fact that they are based on an instinctive dislike of the law and on an apprehension that the powers may be abused. There are possibly members who are actuated by other motives, but I do not address myself to them. I address myself to those whom I believe to be anxious to co-operate with the Government and who yet feel the greatest apprehension regarding the use which may be made of this Bill. Well, my Lord, I should be very glad if they would consider the position a little from the point of view of the Government. We have examined it from their point of view; we have done all that we can to meet them and have made changes in the Bill which I think have commended themselves to Hon'ble Members as improvements. The position as it appears to Government is very clear. The facts are well known. This revolutionary movement is here as is abundantly proved by the findings of the Rowlatt Report which are corroborated by the observations of Messrs. Beachcroft and Chandavarkar in their memorandum, and indeed, if further confirmation of the findings is necessary, it is to be found by that grim history of crime which Hon'ble Members will find detailed in the Report and indeed often in the daily newspapers. I want the Council to remember that this statement of the findings of fact was not arrived at by the Government or by any biased tribunal, but by a thoroughly impartial and independent one.

"It has however been alleged that this revolutionary movement, if it once existed, is dead and that there is now no reason for such action as we propose to take—I think my Hon'ble friend Mr. Banerjea rather takes that line—I wish that this were true, my Lord, and I wish that it was not incumbent upon us to introduce legislation of this character. I will not repeat now the arguments to show that this movement is there very alive, but I will only ask the Council to read again the statements made in the first debate in this Council,

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*That in clause 25 (2) after the words 'relevant and reasonable' the following proviso be inserted:—

'Provided that the investigating authority shall, if the person in question applies to him for process to compel the attendance of any witness or the production of any document or thing, issue such process, unless for reasons to be recorded he deems it unnecessary to do so and for this purpose, such authority shall have all the powers conferred by the Code on a court.'

and to say then whether or not this movement is not unhappilly still prevalent. I admit that it has been scotched ; but it is not killed, and I should look upon any revival of it as a very very terrible calamity. My Lord, I would like to ask, if this movement is dead, if there is now no revolutionary party, why is it that the Bengal Council recently on a motion for the release of the internees decided to do nothing of the kind, that a Resolution to this effect was negatived without division, and the mover of that Resolution found no speaker to support him in the Council.

"My Lord, I have been told, and I entirely believe it, that the members of this Council sincerely sympathise with the Government in their desire to suppress this form of crime. My regret is that this sympathy of the Hon'ble Members is not sometimes a little more constructive. We have here keen thinkers, great speakers and acute lawyers, all of whom have combined upon destructive criticisms of this Bill. So far as it is possible, we have accepted much of this criticism modifying the Bill in very important particulars. It has been suggested by some members that the changes that have been made are not important, but I do not think, that that can really be argued by any one who examines the Bill as introduced and as it stands now. Another argument which has been put forward is the suggestion that the present law is adequate to meet our requirements, that section 108 of the Criminal Procedure Code, the provisions of the Penal Code and the Act of 1908 provide us with all that we require. Well, my Lord, I ask the Council to consider the broad facts and whether it is not proved to the hilt that these measures are inadequate. I ask them to read the Report again, to consider the history of crime therein revealed, to remember what the character of the authors was, and once more to go back to the memorandum of Messrs. Beachcroft and Chandavarkar which I regard as most valuable; I ask them to read the speeches made by Mr. Provosh Chandar Mitter and others in the Bengal Council recently, and I believe that they will agree that this position cannot be maintained.

"The main criticism of the Bill, my Lord, however, is based on a different line. It is said that it is an unfair infringement of the liberty of the subject, that it is repugnant to all ideas of Western justice. This aspect has been put before us with very great force by many speakers. I do not know if it is fair to single out individual speakers but I should like to say that the Hon'ble Mr. Sastri and the Hon'ble Mr. Jinnah, though he is not here, put this matter in a way that moved all of us and prompted a careful reconsideration of the facts. My Lord, we admit that this is a drastic measure and a departure from ordinary principles. But I want the Council to look at the position more from a practical point of view rather than from a theoretical one. I want them again to remember what I said very often, and cannot repeat it too often—I want them to remember the authorities by whom this Bill was recommended. I want them to remember that they were all except one judicial officers who would be entirely unlikely to suggest legislation of this kind if there had been any other remedy which would satisfactorily meet this evil. I want the Council also to again remember that the circumstances in which this law can be brought into operation and the people to whom it can be made to apply are very special. It can only apply when revolutionary crime is prevalent, and then only to persons found to be actively concerned in those crimes.

"My Lord, I have heard a great deal during this debate of the liberty of the subject and of the privileges of citizenship. Sometimes I wish I had heard a little more of the duties and responsibilities of citizenship which are equally important, and even now I ask the Members of this Council to co-operate with the Government and the authorities in crushing this movement through the ordinary courts of justice, to use their great authority, their weighty influence in inducing the public to assist us in this matter; to get members of the public to come forward as witnesses courageously and to do their duty as jurors or in whatever capacity it may be in connection with the case honestly and fearlessly. My Lord, even now if we secure that support from the public I believe that the necessity for bringing this Bill into force in any place will be much less cogent. It is with that object, not as any kind of reproach, that I am asking again for the co-operation

of Members of this Council in crushing this movement. I advert to this because we are anxious not to put this Act into force save in case of real necessity. It has been suggested that we are always anxious to take drastic powers, that we seek to increase our authority and our prestige by legislation of this character. My Lord, those who are familiar with the history of the Government of India know that there really is no foundation for that assertion. If Members of Council read this very report they will find there that the Government of India refused to the last moment, though pressed repeatedly to do it, to enact the Defence of India Act. It was only when we were forced by circumstances of a very cogent character that we undertook that legislation. My Lord, I have said something of the sense of civic responsibility, but it may well be urged on the other side that our system of administration is ill-calculated to foster it, and further that these repressive measures to which I have alluded can never prove a permanent and effective remedy for discontents in the body politic. Both these facts I admit and it is, my Lord, for that very reason that simultaneously with this measure we are proceeding to promote a sense of civic responsibility, to remove the cause of this discontent by changes in the constitution and in the system of administration in this country through a measure which we all hope will shortly be laid before Parliament. It is well, my Lord, on the other hand, to remember that no reasoned political progress is possible unless the public peace is maintained, that anarchy and revolution are the greatest enemies of sane political advance, and it is for this reason that we seek the support of Council in this measure. My Lord, I have now very little more to say. The Bill has been examined and discussed in the greatest detail, and there are really only two points which remain to which I wish to refer, in order to allay, as far as I may, the fears of those who think firstly, that the law can or will be abused, and secondly, that even in the case of these young revolutionaries it may have the effect of driving young men to further sedition and making them worse than they are at present. My Lord, it is far from the desire of Government that any of these young revolutionaries should be further embittered, and I think if the Council were aware of the efforts which are made by the authorities at present to reform these young men, to lead them to saner habits of thought in the hope that they may realise that the path of the future of India does not lie through treason and murder, I think if the Council knew of these facts, the Government would at least get some credit for its efforts in that direction. I have cited particular cases to individual Hon'ble Members of this Council in which these efforts have been successful. I think Mr. Ironside referred to one recently here, and I believe that the Hon'ble Mr. Banerjea will bear me out as to our policy in this matter. I wish to assure the Council that it will be our earnest endeavour, should it unfortunately ever be necessary to put this Act into operation, to adopt all measures possible to help these young men into the right path and wean them from their criminal propensities. Finally, my Lord, should it ever be necessary to put this Act into force, I can only assure the Council that we will make it our duty to see that it is used only for the suppression of revolutionary and anarchical offences, a form of crime which we believe to be of the greatest danger to the future of this country."

12-16 P.M. **The Hon'ble Mr. V. J. Patel:**—"My Lord, I beg to move that in the motion that the Bill be passed, for the words 'be passed' the words 'by the Council be republished' be substituted. The motion as amended reads—

'That the Bill to cope with anarchical and revolutionary crime, as amended by the Council, be republished.'

"My Lord, this is the last and the final attempt that I am making to persuade Government to consider the desirability of affording the public an opportunity of expressing their opinions on the Bill, not as introduced, not as amended by the Select Committee, but as amended by the Council. It has been more than once suggested by the Hon'ble the Home Member that important modifications have been made by this Council in the Bill. So far as I am concerned, my Lord, I beg to differ. I say, and I am sure you will believe me, that I have very carefully compared the original Bill, the Bill as

amended by the Select Committee, and the Bill as now amended by the Council. I maintain that the essential features of the Bill remain unaltered. The main principles underlying the Bill as introduced are there. However, as there is this difference of opinion between the non-official Members and the Government, namely, whether the modifications made by this Council in the Bill really amount to important modifications or not, I submit time should be allowed to the public to say what they feel and think of them. If the people are satisfied with the modifications made by this Council we shall have nothing to say. If they accept the view that my Hon'ble friend the Home Member takes of the modifications, well, we in this Council will have no reason to complain. But let the people say what they feel, what they think about these modifications.

"I need not at this stage go into the question as to the urgency or otherwise of this measure. It has been over and over again pointed out that there is really no urgency to pass this measure at this Session of the Council. You can wait and call for public opinions and then pass it if you wish in September. That being so, your Excellency, I trust Government will at least, for the sake of the non-official Members, allow them time to gauge public opinion on the modifications made, to feel the pulse of the people, so that we may be in a better position to decide our attitude.

"I now come to the merits of the Bill, because I do not wish to take up the time of the Council by making two speeches, one on my amendment and another on the motion.

"My Lord, we have now reached the final stage of this extremely unpopular measure. The Government remains as unbending as ever in total disregard or, I should say, defiance of the unanimous protest of the entire Indian opinion, both inside and outside of this Council. We did our best to persuade the Government to abandon the measure or at any rate to postpone its consideration till the passing of the Reform Bill into Parliament. We failed. We did all that was possible to have some of our important amendments accepted in order to make the Bill less dangerous, less obnoxious, and thereby perhaps less unacceptable; but our appeals and our prayers fell on deaf ears. We confess we miserably failed in all our endeavours. It remains for us now in this Council to enter our most emphatic protest in the clearest possible manner against the passing of this Bill into law. In doing so, I propose to place on record once again some of my reasons in brief. I am of opinion, my Lord, that it is not within the competence of this Council to enact this law. In any case, the question is not so free from doubt as the Hon'ble the Law Member would have the Council to believe. In this connection three points arise for the consideration of this Council:—

"First, section 65 of the Government of India Act, 1915, says that 'the Governor General in Legislative Council has not, unless expressly so authorised by Act of Parliament, power to make any law repealing or affecting any part of the unwritten laws or constitution of the United Kingdom of Great Britain or Ireland, whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom.' Now, what is this bond of allegiance referred to in the section? It is that the Crown protects the subject against arbitrary executive power, and that the subject is entitled to be tried according to the recognised forms of law before he is deprived of his liberty. The proposed Bill, my Lord, in Parts II and III substitutes the authority of the executive for the judiciary in respect of certain offences and thus infringes upon the fundamental liberties of the subjects of His Majesty in India, thereby repealing the unwritten laws and constitution of the United Kingdom whereon depends their allegiance to the Crown. It is a question therefore whether the Indian Legislative Council has any authority to enact this law.

"Second, section 106 of the Government of India Act, 1915, provides that 'the several High Courts are Courts of Record and have such jurisdiction, original and appellate, ... and all such powers and authority over or in relation to the administration of justice . . . . as are vested in them by Letters Patent.' The section further states that 'the Letters Patent

establishing or vesting jurisdiction, powers or authority in a High Court may be amended from time to time by His Majesty by further Letters Patent.' Part I of the Bill ousts the jurisdiction of the High Court and vests it in a specially constituted tribunal. The Judges of the Indian High Courts derive their authority from the Letters Patent signed by His Majesty, and their powers could not, in my opinion, be curtailed for any reason by any enactment of the Indian Legislative Council as it is proposed to be done under this Bill.

"Thirdly, section 32 of the Government of India Act, 1915, says :—

'(*a*) That the Secretary of State in Council may sue and be sued by the name of the Secretary of State in Council as a body corporate. (*b*) Every person shall have the same remedy against the Secretary of State in Council as he might have had against the East India Company if the Government of India Act, 1858, and this Act had not been passed, while section 65 (*2*) provides that 'the Governor General in Legislative Council has not, unless expressly so authorised by Act of Parliament, power to make any law repealing or affecting any Act of Parliament passed after the year 1860 and extending to British India'.'

"The provisions of these two sections read together make it clear, my Lord, that the Indian Legislature has no power to enact a law depriving any British Indian subject of his right to sue the Secretary of State in Council in cases where such a right existed prior to 1858. And yet what do we find ? We find that clause 41 of the Bill says that 'no order under this Act shall be called in question in any court.' This view is supported by the authority of the well-known Moment's case decided by their Lordships of the Privy Council confirming the judgment of the Chief Court of Burma. They held that the provisions of section 41 (*b*) of the Lower Burma Town and Village Lands Act (Burma Act IV of 1908) was *ultra vires*. The clause of the Act in question runs thus :—

'No civil court shall have jurisdiction to determine any claim to any right over land as against the Government.'

"The Government of India on this decision moved His Majesty's Government for a repeal of section 65 of the Act of 1858, which corresponds to section 32 of the Government of India Act, 1915, with the result that an amending Bill was introduced in the House of Lords. The Bill was referred to a Joint Committee of both Houses, and after full discussion of the pros and cons of the question, the Committee recommended the deletion of the clause in question. The discussion is very interesting, and I will not trouble the Council with the extracts already quoted by my Hon'ble friend Mr. Khaparde, but I will take this opportunity of placing before this Council a few extracts so far as they are relevant to the question which we are considering. The Chairman of the Committee was Lord Loreburn. He said :—

'It might be as well to state from the judicial point of view how this matter stands when an Imperial Act of Parliament has been passed, and this law is applicable to India and the self-governing Dominions and to every corner of the British Empire, when an Imperial Act has been passed which refers to a Dominion or Colony or Dependency, then unless there is power given in the Imperial Act the local legislature cannot pass a law which is in contravention of that. The Imperial Act of Parliament is one very convenient method in the management of the affairs of the Empire, as, for instance, the Canadian Act of 1867.

'The Canadians came and asked for the Imperial Act of Parliament, they got it, and no local legislature in Canada can act against it. They come to the Imperial Parliament, which is always ready to meet them. In the case of India the law allowed anyone to sue the old East India Company, it was not the Crown at all, it was the Company. Act 1858, cap. 106, section 65, enacted these words.

'The Secretary of State in Council shall and may sue and be sued as well in India as in England by the name of the Secretary of State in Council as a body corporate and all persons and bodies politic shall and may have and take the same suits, remedies and proceedings, legal and equitable, against the Secretary of State in Council of India as they could have done against the said Company; and the property and effects hereby vested in Her Majesty for the purposes of the Government of India, or acquired for the said purposes, shall be subject and liable to the same judgments and executions as they would while vested in the said company have been liable to in respect of debts and liabilities lawfully contracted and incurred by the said company.'

"Therefore, that was a specific enactment, and the Privy Council apparently—I have been looking at their decision, and I now recollect it—the Privy Council quoted that, and then they said that the effect of that section was to debar the Government of India from passing any Act which could

prevent a subject from suing the Secretary of State in Council in any case in which he could have similarly sued the East India Company. The origin is the principle which I have mentioned, and that was the decision, and that was the only decision. They applied it to the case of land. Then Mr. Roberts tells us about inconvenience which has arisen.

'Lord Islington: I should like to repeat and enforce what Mr. Roberts has said. It will place the legislatures in India in a very embarrassing position indeed unless something is done, and I want to appeal to the committee on that score; as to whether it should take the form of the wording of the proposed amendment or whether it should undergo modifications is a matter we could decide upon here; but I think the committee, after what they have heard, and in view of the position of affairs in India with regard to these thirty odd Acts which have been passed by local legislatures and in view also of the number of Acts, amounting to hundreds, before the Moment decision, which would also be open to appeal to the Privy Council, will realise the position is a very serious one, not only for the legislation which has been passed, but in view of any legislation that is to be proposed with the object of being passed in the future.

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Chairman: Then the real point is that the local legislatures in India have passed Acts, or think that they ought to be able to pass Acts, which do interfere with the right of an individual to sue the Secretary of State?

Sir Courteney Ilbert: Which may interfere. I have a long list here. It may be convenient to have copies of this list circulated for the information of members.

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Chairman: I think it will be very useful. It has evidently been very carefully thought out and it will enable the Committee to see how the point arises, as for example in the first case, in the Defence of India (Criminal) Act of 1915, there is a clause saying the judgment of the Commissioners shall be final and conclusive. It might be that the Commissioners would say that the Secretary of State for India had done right, and then it might be pleased that he had been pronounced to have done right, and therefore could not be sued. That is the kind of thing you mean?

Sir Courteney Ilbert: Yes.

Chairman: It looks as if provision had to be made for that sort of thing. Very likely there are a great many others; but I think it will be desirable that the committee should have an opportunity of seeing these instances. It is a very difficult matter. The remedy you prescribe is to enable the legislature of India to abolish altogether the right of suing the Secretary of State.

Lord Islington: Yes.

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Sir John Jardine: * * * * * *

The natives, especially in the Presidency towns, where the English law since 1726 has been in existence, with certain modifications (and the same thing applies to Rangoon and some other towns), have got very much that feeling too. Some of their titles are under a quasi-English law, and, as far as I know, they have always thought that the power given by enactments like that of 1858, which empowers the subject to sue in courts that are beyond all suspicion, is a valuable thing for them to have; it increases the confidence of the people under our Government, and as far as I know, does no harm at all. It is irritating to a Government to lose a case and the Revenue Officers do not like it much, but that is a small thing compared with the immense matter of governing the people according to their own notions. That is a matter, so far as the policy is concerned, to be determined by the feelings—the carefully expressed feelings—of the people. * * *

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Lord Islington: I should like to say a word about the subject of our discussion last week, clause 2, sub-clause (*d*) which bars the right to sue the Secretary of State in particular cases. Since we met last week, this sub-section has been the subject of careful consideration by the India Office, both in the light of the memorials which have come from various parts of India and England, and also in the light of the discussion that took place here last week, which clearly showed that there was a very strong feeling against the principle which is embodied in this proposal being inserted in this Bill. The India Office, therefore, have considered that perhaps the wisest plan on the whole, under all the circumstances, in view of the fact that this is regarded as a proposal of a controversial character, and as controversial matters are as far as possible to be barred during the war, is to omit this provision from the Bill. We discussed it in all its different bearings, first of all as to whether some modification might be made with a view to dealing with this difficult subject in the future without at the same time removing the proper appeal under proper circumstances. We discussed the various proposals put forward, and especially the one put forward by your Lordship; but they were so many difficulties that presented themselves even with that proposal that we felt obliged to abandon it. Then came the question of modifying it to the extent of making it retrospective, namely, confining it to the extent of making it retrospective, namely, confining it to the validating of existing legislation and on consideration we came to the conclusion that even in that case it might lead to more trouble than might at first be anticipated.

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Of course, the question may crop up in the future, and then it will have to be dealt with, but probably it had better be dealt with under the circumstances by an outside measure. That is the general view of the Advisory Committee. If this commends itself to this committee, I hope I shall be able to hear of its approval.'

"It was under these circumstances that the proposed amendment came to be dropped, my Lord. I have already observed that the question whether the Indian Legislature is competent to pass this measure is not free from doubt, but I would go further and say that it is certainly not a question which should have been lightly treated or summarily rejected. Indeed, the learned authors of the Rowlatt Report themselves in the concluding paragraph have expressed their doubt and made no attempt to solve this difficult question. They say 'in making suggestions for legislation, we have not considered at all whether it could be argued that such legislation is in any respect beyond the competence of the Governor General in Council. We have no authority to lay down the law on any such point and any provisional assumption as the basis of our proposals would only cause embarrassment. We have proceeded, therefore, on the basis that any suggestions of ours which it may be decided to adopt will be given effect to by some legislature competent for the purpose.

"Having said so much about the competency of this Legislature to pass this law, I now come to the provisions of the Bill as amended by the Council.

PART I.

"(1) The Executive Government is empowered to say that certain offences shall be tried by a specially constituted tribunal and not by the ordinary courts of law.

(2) In such trials, there shall be no jury.

(3) In such trials, there shall be no commitment proceedings.

(4) In such trials, certain statements otherwise inadmissible shall be admitted in evidence.

(5) In such trials, the accused person may be examined and cross-examined on oath as a witness on his own behalf.

(6) Such trials shall ordinarily be held in some place other than the usual place of sitting of the High Court on the mere certificate of the Advocate-General unsupported by any affidavit or grounds.

(7) The tribunal is bound to accept the opinion of the Local Government that the offence is connected with a movement endangering the safety of the State and sentence the accused in spite of its belief that the offence is in no way connected with any such movement.

(8) The judgment of the tribunal is to be final and conclusive and there is to be no right of appeal or revision and no High Court is to transfer any case or issue any mandamus.

PARTS II AND III.

"The provisions of these Parts stand self-condemned. Under Part II the Provincial Executive, on a notification of the Governor General in Council, is empowered to pass all or any of the following orders against any person in their jurisdiction who, in their opinion, is or has been concerned in any movement of the nature referred to in section 20:—

(1) To execute a bond for a period of one year, to be extended to another year if need be, that he will not commit or abet the commitment of any scheduled offence.

(2) To notify his residence or change of residence to the authority specified.

(3) To remain or reside in any specified area in British India.

(4) To abstain from any act calculated to disturb the public peace or prejudicial to the public safety.

(5) To report himself to the police at specified periods.

Under the provisions of Part III, the Provincial Executive, on a similar notification, and in certain circumstances, is empowered,

(*a*) to arrest without warrant any person who, in their opinion, is concerned in a scheduled offence,

(*b*) to confine him,

(*c*) to order the search of any place which in their opinion has been, is being or about to be used by any person for any purpose prejudicial to the public safety.

"It is to be noted that all these orders are to be made without even the semblance of a judicial inquiry in any shape or form. As one of the non-official Members of this Council, I think it was my Hon'ble friend, Dr. Sapru, very rightly remarked, these provisions are nothing more and nothing less than 'undiluted coercion.' It has been suggested that there are provisions in these Parts calculated to safeguard the interests of aggrieved persons. These provisions in my humble opinion are hopelessly inadequate, and the so-called safeguards are merely illusory for the following reasons. The appointment of the investigating authority is to be made by the executive government; the investigation is to be held *in camera*; the person concerned is to have no right to be present at all the stages of the inquiry; the person aggrieved is to have no right to be represented by a pleader; the investigating authority is not to be bound to follow any rule of the law of evidence; the investigating authority is not to disclose to the person concerned any fact the communication of which might endanger the public safety or the safety of any individual, however material that fact may be for the purposes of his defence. No oath is to be administered to any witness; and the Local Government finally is to decide whether they should accept any conclusion of the investigating authority or not.

"My Lord, the provisions of Part IV are intended to deal with persons already under executive control under the Defence of India Act, 1915, the Bengal State Prisoners Regulation III of 1818, and the Ingress into India Ordinance of 1914 as continued in force by the Emergency Legislation Continuance Act of 1915. It is provided that every person dealt with under the Defence of India Act shall be deemed to be a person resident in an area in which a notification under section 20 is in force and the provisions of Part II shall apply to every such person accordingly, and lastly every person dealt with under the Ingress into India Ordinance is to be deemed a person resident in an area in which a notification under section 20 is in force, and the provisions of that Part shall apply to every such person accordingly. It is, therefore, clear from these provisions that the persons under executive control either under the Defence of India Act or the Ingress into India Ordinance must continue to remain under such control so long as the Executive Government considers it to be necessary, subject to a maximum period of two years, without any trial even under the provisions of the first Part of this Bill.

"My Lord, the provisions of Part V furnish the last link in the chain. They provide that no order passed under any of the provisions of the Act is to be called in question in any Court, and no suit, prosecution or other proceedings shall lie against any person for anything done or intended to be done in good faith, and thus complete the paramountcy of the executive and place the liberty of the subject entirely at its mercy. In these provisions we find the functions of the executive, the legislature and the judiciary all combined in the executive. The legislature in this country, constituted as it is, carries out the will of the executive. It is now proposed that in respect of certain offences the judiciary also must disappear and make room for the executive. Suffice it to say that the provisions are without a parallel in the legislative history of any civilised country.

"We are told, my Lord, that the measure after all is to be a temporary one to be in force for a period of three years only, and non-official members must, therefore, reconsider their attitude towards the Bill on that account. I submit that a measure which is in fact and in substance dangerous and obnoxious does not cease to be so because it is limited in duration. The question in issue between Government and non-officials is not, and has never been, whether the measure should be a permanent or a temporary one. The difference is really one of principle. There can, therefore, be no question of a change of attitude or of compromise. No Indian can, and I venture to submit, will, therefore, ever consent to this measure being placed on the Statute-book in whatever form or shape even. We believe that repression is really no remedy

to eradicate revolutionary and anarchical crimes. What is the root cause of the evil? These crimes are the outcome of political and administrative stagnation which has resulted in untold miseries to the people of India. The only remedy, therefore, is to remove the standing grievances of the people which the Indian National Congress has been proclaiming year after year for the last three and thirty years. Has repression succeeded in any country? Has it succeeded in Ireland with all its Crimes Acts? Has it succeeded in our own? My Lord, we have amended the criminal law to widen the scope of the definition of sedition. We have amended the Criminal Procedure Code from time to time to meet the end in view. We have disfigured our Statute-book by placing on it the Criminal Law Amendment Act of 1908, the Conspiracy Act of 1913, the Press laws and the like; we tried the Prevention of Seditious Meetings Act, with what result we all know. In the Select Committee also, my Lord, we tried our best to convince the committee that the committee should recommend that the Bill should be dropped. However, I am not going into that question because your Excellency has already ruled that the Select Committee has no power to go into the principles of the Bill, but I was confident, my Lord, that in deference to the unanimous Indian opposition to the Bill, both in and outside the Council, and in view of the fact that the passage of the Bill would throw the country into a vortex of agitation unknown in the history of British India, the Select Committee would see its way to so amend the Bill as to make it less dangerous and therefore to some extent less objectionable; in that hope I confess I was grievously disappointed. No doubt the Select Committee has recommended some alterations in the Bill, but these relate to non-essentials, and I am sorry to say that not an inch of ground was yielded in respect of essentials. If at all, the Bill has been made stiffer in one essential particular, namely, that while the provisions of Part II of the Bill as introduced were applicable to movements which in the opinion of the Governor General in Council were likely to lead to the commission of offences against the State only, the said provisions as amended by the Select Committee and subsequently by this Council apply to movements likely to lead to the commission of all the scheduled offences which are, of course, much wider in scope.

"My Lord, on the motion that the report of the Select Committee be taken into consideration we again suggested postponement. We were defeated by the official majority. Then we moved amendments suggesting the deletion of Parts I, II and III; we lost. We also moved amendments to make the Bill less offensive in some important particulars. The Government remained as firm as a rock. They would not and did not yield. Is it not then a legitimate question to ask whether the British rule in India is based on force or on the people's will? I submit it is due to the people that they should understand how they stand.

"I now propose to say a few words regarding the procedure adopted in connection with this Bill. Evidence on which the Rowlatt Committee based their findings have not been supplied to Members of the Council and they are asked to accept those findings as correct. The text of the Bill as introduced was, according to my information, not submitted to the Secretary of State and his sanction was obtained to the introduction of some Bill on the lines of the Rowlatt Committee recommendations. I have more than once pointed out that the Bill goes beyond those recommendations, in one very essential particular, namely, the addition of sections 124A and 153A to the Schedule. If that is so, if my view is correct, and I do not think Government will challenge it, was the sanction of the Secretary of State obtained to the addition of these two sections in the Schedule? The Rowlatt Committee recommended that the Schedule to the Criminal Law Amendment Act, 1908, might be adopted. That Schedule does not include these two sections. The Government were not in a position to give any satisfactory explanation why they have exceeded the recommendations of the Committee on this point. Persons who in the opinion of the executive government are concerned in the commission of offences under these two sections will on this Bill becoming law not be tried in courts of law but at the discretion of the executive government dealt with under Parts II and III of the Bill. It is easy to understand why these sections have been

included in the Schedule in the absence of any recommendation of the Committee in that behalf, and yet we are assured in season and out of season that the measure will not be used to affect in the slightest degree constitutional political agitation. The correspondence between the Government of India and the Secretary of State in regard to this Bill is kept back from the members of this Council on the ground that it is confidential. Apart from this there is one point of very great importance which I desire to bring to the notice of the Council. It is this I am of opinion that the whole proceedings in connection with this Bill since and from the presentation of the so-called report of the Select Committee are invalid and illegal.

His Excellency the President:—"Order, order, the Hon'ble Member has no right to dispute my ruling. My ruling was that the report of the Select Committee was both valid and complete. He has no right to challenge that decision in this Council."

The Hon'ble Mr. V. J. Patel:—"I do so, my Lord, in support of my case that the proceedings in this Council are *ultra vires*."

His Excellency the President:—"You cannot dispute the ruling of the President."

The Hon'ble Mr. V. J. Patel:—"The Chairman of the Select Committee by his ruling prevented the Select Committee from discussing the principles of the Bill and considering the question of the competence of the Indian legislature to enact this law. This ruling and your Excellency's ruling about which I am not allowed to talk, in my humble opinion, have vitiated the whole proceedings in connection with this Bill and the Bill passed in that manner cannot have any recognition in law. To sum up, my Lord, I protest against this Bill for the following among other reasons:—

(1) It is not within the competence of the Indian legislature to pass this Bill into law.

(2) It casts an undeserved slur on the loyalty of 300 millions of people and amounts in fact to an indictment against the whole nation.

(3) It substitutes the rule of the executive for that of the judiciary and thus destroys the very foundations on which British liberty rests.

(4) It will kill all political life in the country and thus make 'ordered progress' impossible.

(5) It will intensify and not mitigate the evil complained of. It will drive all agitation into hidden channels with the result that consequential evils will follow as surely as night follows the day.

(6) It is utterly subversive of the order of things hitherto recognised and acted upon in all civilised countries. It is unparalleled in the legislative history of any such country.

(7) It is being passed in defiance of the unanimous Indian opinion, both in and outside this Council.

(8) Repression is not the remedy for eradicating anarchical and revolutionary crimes. These crimes are the outcome of political stagnation which has resulted in untold miseries to the people of this country.

Remove the root cause and anarchy will disappear.

(9) It will plant in the minds of the people harsh memories which even time will not soften.

(10) Stability of British rule in India depends and must depend on the peoples' will and not on force.

(11) The Bill is being passed into law on an incomplete and invalid report of the Select Committee. All the proceedings of the Council since the presentation of such report are, therefore, invalid. Law passed in that manner would be *ultra vires*.

"No wonder then that under these circumstances you find some of us who care for liberty, who believe in liberty, who love liberty, are prepared to disobey laws of this character and submit to the penalty of such breaches. Passive resistance, my Lord, is the last and the only constitutional weapon of a despairing people. It is my duty to warn your Excellency's Government against the consequences of driving the peaceful and law-abiding people as the people of India are to resort to passive resistance. I do so, my Lord, in the best interests of India and the Empire."

12-54 P.M. **The Hon'ble Mr. Surendra Nath Banerjea:**—"My Lord, I desire to congratulate the Hon'ble the Home Member on the conciliatory tone of his speech and, my Lord, it is only right and proper and in justice to myself that I should say that his attitude and that of the Hon'ble the Law Member who have borne the brunt of this controversy, that their attitude consistently with their angle of vision has been one of conciliatoriness. We have been in opposing camps, discussing, arguing, dissenting, but our views have always been treated with consideration, courtesy and attention, and if controversialists in other spheres exhibited the same temper, I feel that life and the affairs of life would wear a far more pleasant aspect than at present and the acerbities of debate would not be permitted to interfere with the sweetness and the pleasantness of our personal and social relations.

"My Lord, my Hon'ble friend has invited us, the party of moderates, to co-operate with Government in regard to this matter. That is our creed—co-operation with the Government wherever possible, opposition where the interests of the mother-land require it. I am afraid that we are now in the latter category. However that may be, we are most anxious to co-operate with the Government in this matter. My Lord, I claim that we have always done so. My Lord, my Hon'ble friend has complained that we have no constructive policy to suggest. I venture to dissent from that view; we have a constructive policy, we have always had a constructive policy and we have pressed for its acceptance in season and out of season. It is only recently that our policy has found acceptance. The constructive policy of the Government in dealing with anarchy must be divided into two parts, namely, the policy of conciliation and the policy of repression. Which, my Lord, would you put in the forefront? I think it must be the policy of conciliation. My Lord, I think your Government is prepared at the present moment to give to that policy the pre-eminence which it deserves. Anarchism has its roots in political discontent and industrial backwardness. My Lord, you are endeavouring at the present moment to grapple with these root causes by political and industrial expansion. You have had your Industrial Commission and you are pledged to carry out its recommendations after due consideration. You have got the reform scheme which also you are pledged to carry out and the credit of your Excellency's Government is staked to that scheme. My Lord, your efforts in dealing with anarchical and revolutionary movements by this simultaneous policy have been partially crowned with success, and I venture to think that there was no more striking illustration of this fact than what appeared from the letter that was read out in this Council the other day. My Hon'ble friend Mr. Chanda placed before you a letter from a revolutionary in the Andaman Islands and in that letter the revolutionary said 'now that responsible government has been promised and it is going to be established our occupation is gone. We must give up our revolutionary ideas and co-operate with the Government in the work of political progress and emancipation.' My Lord, therefore, so far as the conciliation of popular feeling and the removal of popular discontent are concerned, the inauguration of the reform scheme has borne golden fruits. I am sure the result of giving effect to the recommendations of the Industrial Commission will be similar. Therefore, my Lord, this policy of conciliation bids fair to be productive of splendid results. My advice, and I am sure it will be advice that will be re-echoed by everyone, 'Rely upon this policy, have faith in it, persevere with it, give effect to it and abandon the other policy of repression unless and until it is absolutely proved to be necessary in the interests of public safety.' We have appealed to you and not only to your Excellency's Government but also to the Governments of India that have

gone before; we have appealed to them again and again to follow a policy of conciliation. Conciliation is the sovereign remedy, as Burke says of political distempers. You have risen slowly but steadily to a conception of the soundness of this policy. Therefore in that matter I claim that we of the moderate party have been co-operating with the Government in inviting it to follow the constructive policy which the Government has now adopted. Not only that, but we have also been trying to arrange the social forces on behalf of law and order. Meetings have been held, organizations have been formed, leaflets have been published, articles have appeared in the newspapers warning the people against the danger of revolutionary movements. Therefore, my Lord, I claim that we have done our bit in helping the Government to root out anarchical and revolutionary movements. As regards repressive policy, we have never supported it. Repression has everywhere failed. That is the outstanding lesson of history. It has only been partially successful where it has been associated with conciliatory and ameliorative measures. In regard to repressive measures, our suggestion has been, and it is not now, and I desire to repeat it, you have got the Defence of India Act, you have got Regulation III of 1818. But you say they are more drastic than the Bill that you have laid before us. Be it so, perhaps you are right, but that is not your concern, my Lord. I am the person affected, the people are the persons concerned; they do not want this. They won't have this law, they prefer what you call a drastic measure. Why should you object and look at the matter from your point of view and not theirs. If I were the master of a household,—and Tacitus says that according to the Emperor Agricola the government of a household is far more difficult than the Government of an Empire—well, if I were the master of a household, and if I wanted to do good to the members of my family and if they resolutely withstood it, I would salute and salaam them and would not attempt to force it on them. If they say 'we do not want it' I would give it up—my Lord, I venture to submit that that ought to be or rather should have been—I am afraid now the Bill is going to be passed, that should have been your policy in this connection. We do not want this measure. Some of us recognise that it is perhaps not so drastic as the Defence of India Act or Regulation III of 1818, but still we do not want it. There is excitement, controversy, agitation, and we should rather be without it. Our advice, therefore, to the Government is that they should give up this, Bill or if they cannot give it up, to suspend its operation until there is actually the occasion for putting it into use.

"My Lord, my Hon'ble friend has referred to our want of a sense of civic responsibility, and it is an old and long-standing complaint. He says the sense of civic responsibility has not been developed in us as might have been expected. Having said this, he qualified that observation, very tactfully I think, by adding that it was not our fault. I entirely endorse the view that the fault, if any, is not ours, but I however challenge the statement that we are wanting in a sense of civic responsibility in any degree. I think we are fully equal to the height of our civic obligations. But, my Lord, assuming for argument's ask without admitting the fact at all, assuming for argument's sake that there is a lack of civic responsibility, not in all, but in some sections of our community, who is responsible for it? I say that the Government is directly answerable for this result. You have been training us in our civic duties and obligations. We have sat at your feet, you have been our masters, and may I ask, is it not the greatest reflection upon British rule in India if one is to say that after a century and a half of that rule the people of India have not risen to the full height of their civic responsibilities? I think it would be the strongest indictment that can be brought against the Government of this country. You will be judged not by your great public works but by the public spirit, the patriotism, the nobler sentiments that you have been able to inspire in the public mind of India.

"My Lord, having said all this, I desire to observe that it is my duty to oppose the Bill under a sense of overwhelming responsibility. I frankly acknowledge that the Government have made important concessions from their point of view; the Bill has been made temporary, its scopes have been confined to anarchical crimes, and many modifications have been made in its provisions. But all this does not go far enough. My Lord, the Bill in its essence and character remains unaffected. Its executive

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complexion still overshadows every other aspect of the Bill. My Lord, the Bill as it emerged from the Select Committee and as amended and revised by this Council remains in its main features the same Bill that it was when it was originally introduced. It is in truth an executive order robed in a legislative garb; it is, to quote the words of a distinguished jurist Sir Rash Behari Ghosh, 'a lawless law,' it is a glorified Ordinance, with a judicial colouring sometimes thickly, sometimes thinly laid on. And, therefore, my Lord, you cannot ask us to take in any sense a share of responsibility for this measure. My Lord, responsibility and power go together. Where there is responsibility there must be power. There is none of it in this Council so far as the non-official Indian members are concerned. We have influence, but not power. We can persuade, but we cannot instruct or direct, though we hope under the Reform Scheme the foundations will have been well and truly laid for the transition from influence to power.

"My Lord, my Hon'ble friend has referred to the number of amendments that have been moved in this Council. Amendment after amendment was moved and the vast majority of them were rejected. My Lord, I moved an amendment to the effect that the Bill be republished and referred to the local bodies, Local Governments and the High Courts for criticism. All the non-official members of this Council supported that motion. It was lost. The united voice of the Indian non-official members counted for nothing in this Council. And, my Lord, can you ask us after this to have any responsibility in connection with this matter? Technically it will be a law, but in the truest sense it will be an executive order, an Ordinance. Would it not have been far better if the Government had acknowledged it as such and assumed sole responsibility for the measure without invoking the intervention of the Legislative Council? My Lord, there were no less than 185 amendments that were moved. I have no hesitation in saying that many of them, at any rate a considerable number of them, might have been adopted without in the slightest degree altering the character of the measure or relaxing the stringency of executive authority which is a paramount feature of the Bill. My Lord, my Hon'ble friend Mr. Shafi in a very eloquent and masterly speech asked that the right of appeal to the High Court should be conceded against the decision of the special tribunal. That was lost. The amendment was based upon the Irish Crimes Act. There was another amendment moved to the effect that the accused should be represented by a pleader in the inquiry before the investigating authority. My Lord, there is very strong feeling on the subject. I have received numerous communications from persons unconnected with the law in regard to this matter. My Lord, there is a proverb current in legal circles which embodies a great truth—'A man who pleads his own case has a fool for his client'. My Lord, it was my misfortune on one occasion to have illustrated that proverb. Some 13 years ago I was hauled up before a Magistrate upon a semi-political case. That Magistrate, now an esteemed friend, sits not very far from where I am addressing your Excellency. It was a holiday and no pleader was to be had and I had to defend myself. I am not generally very nervous and I cannot say that I am unaccustomed to speak in public, but I blundered and floundered. I was convicted and the case was taken up to the High Court on appeal and the conviction was quashed. I am perfectly certain that, if I had a pleader to defend me, all this trouble and bother would have been avoided.

"Lastly, my Lord, the Hon'ble Mr. Patel moved an amendment for the elimination of section 124-A and section 153-A. My Lord, there is a widespread impression that this Bill, when it becomes law, will cripple legitimate political activities and bring about the stagnation of public life. This may be utterly unfounded, but whether unfounded or well founded, there is that feeling. It may be a mere prejudice, a vastly exaggerated fear, but I venture to submit that it is the business of the Government to take cognisance even of a prejudice like that; I venture to think Government would have been well advised if that amendment had been accepted.

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"My Lord, our objection to this measure must appeal to the instincts of all right-minded Englishmen, bred in the traditions of law and the reign of law. We object to the Bill because it exalts executive authority and supersedes the forms of judicial procedure. My Lord, Englishmen have been our preceptors;

we have sat at their feet; we have learnt from them the great principles of constitutional freedom, and have been inspired by them with the love of freedom and of the rights of personal liberty. And Englishmen must not complain if they find that we, as their apt pupils, adhere to them, with resolute tenacity and seek to safeguard them against all infringement, even when initiated by Englishmen acting under the highest impulses. My Lord, I think our English rulers ought to be very proud of their handiwork and of the fact that these great constitutional principles have taken firm root in Indian soil. My Lord, the Moghul Empire lives in the great architectural monuments which are the glory of this Imperial city; the British Empire will live in another, and to my mind, a higher form. It will endure in the institutions which it is helping to build up, in the tendencies of character and temperament which it is developing, and above all in the passionate love of freedom which it has inspired in a great and ancient people. My Lord, let me say this with all the emphasis that I can command, that our opposition to this Bill is not an opposition to the government of this country. It is not dictated by any desire to embarrass the Government embarked upon a serious duty. My Lord, it is the product of that jealous, sensitive watchfulness that we feel in safeguarding the precious treasure of our constitutional rights, the noblest gift of England to India. My Lord, it has been said that our opposition to this Bill will constitute an argument against our fitness for responsible government. I am of opinion that it points to just the opposite conclusion. My Lord, the passion for freedom, as all history proclaims, is an index of the capacity for freedom. Read your own history. The history of the growth of Parliamentary institutions in England is the history of the growth and the increasing respect of Englishmen for the rights of personal liberty. From the time of the Magna Charta to the time of the Petition of Rights, it was one long-drawn protracted struggle for the protection of personal liberty, of life and property. And, my Lord, the same thing is happening here, in a different form, in different aspects, under better and higher auspices, under the guidance of Englishmen themselves. And, my Lord, what is at the root of this agitation that is going on in connection with these two Bills, and echoes of which have been heard in this Council? It is the love of constitutional freedom, the jealous regard for constitutional rights safeguarded by law. Therefore, my Lord, I feel that in opposing this Bill we are developing the qualities which Englishmen have taught us to prize, demonstrating to the world the possession of those moral attributes which are a guarantee for the success of representative institutions.

"My Lord, it has been said that these anarchists are only a handful, why bother yourselves with them; I think my friend to my left made that observation? I take that argument for what it is worth. If they are a handful, why then make this serious departure from the ordinary law of the land against the universal protest of the people? They are a handful, I admit, and they are diminishing in number, they were 1,000 last year, they are only 400 this year, and the number will become more and more insignificant when the reform proposals come into operation. My Lord, is it then necessary to have a law of this kind? Is it wise and expedient to have it in the face of the universal protest of a united community, of a community divided in many ways but united on this common platform of opposition to this Bill? My Lord, I do not wish to detain the Council at greater length. One final appeal I desire to make to your Excellency and that is to postpone your assent to the Bill until the time comes when it becomes actually necessary to put it into operation. My Hon'ble friend the Home Member told us the other day that the Bill would not come into operation until six months after the conclusion of peace.

The Hon'ble Sir William Vincent:—"My Lord, I rise to a point of order. I said distinctly, when I was asked, that I would guarantee that no notification would be issued under this Act until after the conclusion of peace. I did not give the undertaking for six months after peace was declared."

The Hon'ble Mr. Surendra Nath Banerjea:—"My proposition is somewhat different; it is not a question of notification but of giving assent to the Bill.

The Hon'ble Sir William Vincent:—"I want to make it clear that I had made no such statement as I understood the Hon'ble Member to attribute to me."

The Hon'ble Mr. Surendra Nath Banerjea:—"I did not misunderstand the Hon'ble Member; I understood him unless he chooses to throw us into some confusion—my Lord, I understood him correctly, namely, that the Bill was not to come into operation until six months after the conclusion of peace. Peace has not yet been concluded. We have therefore six months or more time. My Lord, my submission is that there is no immediate necessity for putting this law on the Statute-book by your Excellency giving your assent to it. My Lord, your Excellency is the representative of the Sovereign in this matter. It is your high and exalted prerogative to veto or to give your assent to any Bill. I appeal to your Excellency to perform this regal function with kingly benignity, moderation and deference to public opinion. My Lord, I am reminded of a Hindu sovereign, who was the beau-ideal of all sovereigns for all time, and that was our Ram Chandra. He went to the forest to please his people. My Lord, we do not want you to go to the forest to please us; but in the spirit of that act of renunciation and of deference to public opinion, may I make this appeal for your Excellency's sympathetic consideration. It would be a step—though only a small step—towards the conciliation of public mind thrown into a state of great excitement over the provisions of this Bill."

[At this stage the Council adjourned for Lunch till 2-15 P.M.]

2-18 P.M. **The Hon'ble Mr. Srinivasa Sastri:**—"My Lord, now that we are at the end of this important piece of legislation, the time has come for us to express our final views. Whatever this Bill does, it does not yet forbid a man to cry when he is hurt; and when we make our last complaints I wish, your Excellency, that you will not exercise your power meticulously and rule us out of order if we may seem to exceed certain bounds. I will try as far as I can to be brief and at the same time to the point.

"In the first place, I wish to acknowledge heartily that both in Select Committee and in Council, the Members of Government who have taken part in the work of this Bill have shown our points of view as much consideration and courtesy as in their opinion was compatible with the integrity of their measure. But that done, I must say a good deal of our wishes—the best part of them—still remains mere wish. The measure has run its pre-ordained course, resistless and inexorable. We have been accused of exaggerating the harmful effects of the Bill. I beg leave to state that as the Bill came to us originally we were fully justified in expressing the alarms that were felt abroad, and it was only when in Select Committee we had persuaded the official Members to put into the Preamble and into the various sections some words clearly indicating the limited scope of the measure that the claim of the Hon'ble the Home Member to have effectually answered this criticism came to be partially fulfilled. I say 'partially' with regret.

"Let us examine one or two items. When we were considering this measure in Council the other day, it was conceded that the investigating authority under Parts II and III should be under an obligation to record in their report an express finding on the question whether the scheduled offence of which a man was accused was really connected with anarchical or revolutionary crime. We asked that a similar provision should be made in Part I, but there the Government were unmoved. By resisting this as regards Part I and by refusal to take away sections 124-A and 153-A from the Schedule, I think the Government have still laid themselves open to the criticism that the measure that is now about to be passed, whatever the intention of Government may be, may at times be used to deal with ordinary political offences as well as offences connected with anarchical or revolutionary movements. On this point, it appears to me that it was fully open to Government, without violating the integrity or the fundamental principles of their Bill, to have met us fully, and I deeply regret that they have found themselves unable to do so. Your Excellency, the experience of legislatures tells us one

thing, that, after all, human affairs run more or less on an accustomed level. When contentious Bills, whether in the English Parliament or in the American Senate or in any other legislature, take shape the air is full of prognostications of catastrophe from those that oppose, while those that defend the measures in question are equally full of promises of the millennium to come. After-events, however, show that neither the prognostications nor the promises come fully true. I hope, your Excellency, that this measure will not fulfil, at all events, all the prognostications to which we have given expression in the Council. No one will rejoice more than I if the event proves that we were unduly Cassandra-like in our prophecies of the result. But may I say, your Excellency, with all respect, that we have been unable to understand fully the psychology that underlies this measure? I have heard a lot of explanations, but it seems to me there is much to say for those who think that behind all these explanations there must be something which has not yet found expression in this Council. Your Lordship will excuse us if we refer to this aspect of the matter with a certain amount of feeling. We feel very strongly that the Bill is not now necessary, that it is not now emergent, that it is inopportune, and we believe in the strength of our belief that this cannot be unknown to Government.

"Then, your Excellency, we believe that if it was necessary for the peace of Bengal and, therefore, of the peace of other provinces that might be affected, that if it was necessary for the peace of India, to check anarchical and revolutionary crime by a new measure, it was open to Government, having the knowledge that they have that they now keep under control nearly every one connected with this form of violence to society, with that knowledge it was open to Government to come to us with a measure confined to these people, taking power from this Council to continue the custody and the detention and the internment, perhaps the imprisonment of people whom they already hold in these ways. It was perfectly open to ask us to give them leave, legislative sanction, to a measure which was confined to these people and to some others who are still at large, but who, they may have evidence to think, deserve this sort of treatment; that was open to Government. The suggestion was made, I think, although not in speeches here. It was not taken up, but a general measure causing widespread alarm has been brought before us and we are now about to finish the legislation. Is it a wonder, then, that people are asking why this anxiety on the part of Government when there is no special need, special emergent need, and when it was possible, without seeming at all events to lay their hands on ordinary political agitators, when it was possible to deal with this matter, why were Government anxious to bring forward this kind of Bill? There are ingenious people who suggest all sorts of things, and it is just as well, speaking solemnly at this last hour to your Excellency's Government, that I should mention one or two things that I have often heard and not only from agitators or from chronic malcontents. I had in the London *Times* the other day the glimpse of a reason which might really lie at the back of this legislation. I will not say it is; I only conjecture. It was said when a lakh of sepoys or so that have served with distinction in the various theatres of the war are returning to India, it is necessary to have in the armoury of Government a strong measure wherewith they could put down, before it reaches any dimensions, the signs of incipient trouble. Another guess that has been put forward is that perhaps it is just as well that Government armed itself with this power before the peace is signed in Europe and the fate of the Turkish Empire fills the Mohammadan community, the hearts of the Mohammadan community, with dangerous discontent. Other people have said it might even be that when the reforms, as they finally come out of Parliament, are found to be shadowy, political discontent in the land may take forms which cannot be grappled with successfully unless Government have extraordinary powers. There is yet another reason which has been suggested and I must walk warily when I bring it to the notice of this Council. My Lord, a little while ago my Hon'ble friend Mr Surendra Nath Banerjea made an appeal to European Members of this Council and to the European community generally, based on their past history, on the struggles through which their forefathers went before they obtained constitutional liberty. That was a noble appeal, and if I refrain from repeating that appeal it is not because I do not believe in it, but I wish for one moment to appeal to our

friends on somewhat lower ground. I ask them to remember that this Bill of downright coercion is meant to deal with the people of India. It is not going to apply to them at all unless certain members thereof in the excess of their zeal for other peoples' liberty, a rather uncommon quality, unless in the excess of such a love of liberty they choose to ally themselves with the fortunes of the down-trodden people of India. Well, so secure from the evil effects of this measure it may be proper for us to appeal to their sympathy and to their chivalry, if not actually to their support. If they could not stand by us in this struggle, let them at least refrain from casting insinuations as to our loyalty; let them at least refrain from saying what they have often said both in and out that Indians who oppose this measure are not only showing their incapacity for responsible government—that is nothing—but are likewise exhibiting criminal sympathy with all forms of sedition and anarchic crime. My Lord, I make this observation with a certain amount of feeling, because I have observed that the Anglo-Indian press in so far as it may be said to voice the feelings of the Anglo-Indian community often indulges in this sort of attack, which really goes to our hearts. But it is not merely irresponsible newspapers that do this. Your Excellency, I was pained beyond expression the other day to read a representation purporting to proceed from the European Association. As it still stands unrebuked and unrepudiated by any leading members of the European community, I wish to read a passage from it to give the Council an idea of how people who feel aggrieved by this measure before us are likely to smart when they find that those who ought to be chivalrous at least in understanding others are departing from this simple rule of charity. I am reading from this representation. 'There is equally evidence for all who run to read that there exists in those circles from which most of the politicians and journalists of nationalist India are recruited, a large amount of sympathy with the real and deserved or imaginary sufferings of the detained criminals. So that, if set at liberty, the murderers and plotters, far from being ostracized, would readily find dupes or allies amongst some of the organisers of what passes for public opinion in India.'

"That is adroitly worded, your Excellency, and it may escape the meshes of the fine-spun criminal law of India. But it is a foul libel on the character and methods of those who like myself stand in opposition to the Bill. Well, the European community in India, I grant, are alarmed; they have cause from their point of view to be alarmed, for no people dread known fear so much as they dread unknown fear. In the enjoyment of privileges, immunities, and let me add, certain monopolies, this community naturally dreads the coming changes. They have no idea of what may come and in their vague fears of the unknown, reach their hands out for some means or other to protect themselves from the uprising of democracy in India, and its attacks on their strongholds. This is another of the reasons that have been suggested to account for the great anxiety of the Government to forge this Bill in advance of the time when it may be needed for putting down dangerous movements. My Lord, this Bill is now coming on because, in the view which I have been for the moment explaining it is feared that it would be difficult to get a Bill of this kind accepted by any conceivable future legislature of India. While there is time take this power, take it as a stand-by in times of peril. I will not say which of these, perhaps some, perhaps all together, account for this Bill before us. Anyhow there it is. In a few moments more this Bill will be law and when the Bill is law it does not remain there, we have still the aftermath, the consequences of the law to the Government of India no less than to us. For as a poet has said in a tragic connection 'If it were done when it is done, then it were well it were done quickly'. I will not go further with this awesome passage; but the darkened page is there and unfortunately, although some of us have tried to dissuade him from the course, Mr. Gandhi has taken it up. Well I know how he will play his part, his character will be bold, blameless, perfectly white. I could only wish, your Excellency, although I trust but faintly, that those of us who also have to write on this darkened page; his followers, the Government and Government employés, we political agitators and detenus, that we could all say at the end of the business that we also wrote perfectly white."

The Hon'ble Mr. Malcolm Hogg:—"My Lord, during the second stage of the discussion of this Bill in this Council owing to the very large number of amendments put down and to the general circumstances of the discussion, I felt that the most profitable contribution which I could make to the proceedings was silence. But now that we have reached the last stage of the discussion of the Bill, I think it is necessary that I should state my attitude towards this Bill. I will do it as briefly as possible. When the Bill was first introduced into this Council I voted in favour of an amendment moved by the Hon'ble Mr. Banerjea. I did this not because I thought that the amendment on its merits was perfect or that it provided an ideal solution of the difficulties, but because it was the most convenient way to indicate my opinion that it was desirable that Government should make a further effort to secure for the Bill the support of the Hon'ble Mr Banerjea and his friends. Well, my Lord, that effort has been made and a considerable number of important amendments have been introduced into the Bill, and personally I can only regret that the effort has not been successful. When the Bill came back to the Council from the Select Committee the Hon'ble Mr. Banerjea moved another amendment, the object of which was to postpone further discussion on the Bill until the September Session of Council. I listened carefully to the speeches made by the Hon'ble mover and those who supported him in favour of his amendment, but I could hear nothing in the nature of a promise that if the amendment was carried they would next September support the Bill, no undertaking that they would spend the interim in educating public opinion, no indication that the reception which this Bill would receive in September would be any different to what it has received here and now. If there had been any such promise or any such indication I should have felt very much tempted to support that amendment, but in the absence of anything of the kind I could not see what there was to be gained by postponement. I could not help feeling that the amendment was little else then a direct negative in disguise; and I think the impression is confirmed by the speeches we have heard to-day from the Hon'ble Mr. Banerjea and the Hon'ble Mr. Sastri I therefore supported the Bill during the second stage of its progress through the Council and I support it to-day, for these reasons. I am satisfied that special measures are necessary to cope with anarchical and revolutionary crime. I am satisfied that no law-abiding citizen, whatever his political opinions and methods may be, so long as they are not criminal has anything to fear from the measure. Lastly, I am satisfied that in respect of the persons who will or may come within the purview of the Bill it does not go beyond the general recommendations of the Rowlatt Committee and that Government cannot do otherwise than accept generally the recommendations of that Committee whose qualifications for their task could scarcely have been higher. Well, as I have said, for these reasons I support the Bill, but before sitting down I must refer to one or two points arising out of the speech of the Hon'ble Mr. Sastri. Mr. Sastri told us that the explanations given hitherto for the Bill were not sufficient and that there was a good deal to be said for those people who felt that there must be some other explanation behind it. Mr. Banerjea told us this morning that it was useless passing a Bill of this nature, or rather that it was unnecessary to pass a Bill of this nature because the number of anarchists and revolutionaries was happily and rapidly dwindling. My Lord, I find it very hard to understand the point of view of my two Hon'ble friends. I would ask them to remember the story revealed in the Rowlatt Report; I would ask them to remember how before the Defence of India Act was passed, the anarchical and revolutionary movement was rapidly spreading, how the minds of inflammable youths were being steadily poisoned by the doctrines of anarchy and revolution, how schools were being made into breeding grounds for future anarchists. I would ask them if they want that process repeated. If no such legislation as this is passed, what will happen? When the Defence of India Act expires, the few, I hope they will be few, the few irreconcilable anarchists will be let out to start again their nefarious processes. The serpent, my Lord, is scotched, not killed. The machinery for the propagation of anarchical ideas is still ready there to resume operations as soon as those who worked it regain their liberty, and I feel perfectly confident, that if this legislation was not passed there would be a repetition

2-41 P.M.

of the same process. The youth of India or of whatever part of India these anarchists selected for their operations would again be exposed to the subtle poisons of their doctrines. I would ask the Hon'ble Mr. Sastri whether that is not reason enough for this measure, and whether he wishes the minds of the rising generation of his countrymen to be subjected to what they were subjected to before the passing of the Defence of India Act.

"Then there is another point, my Lord, which arises out of the Hon'ble Mr. Sastri's speech. He read an extract from a recent representation of the European Association. I have not previously seen that representation. I have not read it *in toto*, and it is therefore somewhat difficult for me to say how far it does or does not represent my individual views. But he complains that that representation or a portion of that representation which he read misrepresents the point of view of many of those who are opposing this measure. Well, as I understood the sentences he read, they only suggested that among those who oppose the measure there might be some who would be easy dupes of the revolutionary party. But be that as it may, I regret that the Hon'ble Mr. Sastri was led by his feelings into a misrepresentation as gross as any he complained of. If I understood him aright, he suggested that some of those Europeans who are now supporting the Bill were really actuated by a fear of what might be the results of the impending political changes in India. My Lord, if it was misrepresentation he complained of, I think that no misrepresentation could be more gross than the one he was himself guilty of. I cannot see any connection between the results of any political changes which we may expect in India and legislation of this nature which is designed merely to deal with a particular small section of the community addicted to revolutionary and anarchical ideas and crimes and to protect the youth of India from their insidious doctrines and teachings."

2-51 P.M. **The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, nearly everything that has to be said has been said; every argument that we had to urge has been urged against the passing of this measure, and now on the final motion that the Bill be passed, I do not think there is really any necessity for repeating the same arguments. But at the same time, my Lord, I cannot allow myself to give a silent vote on this very vital question which affects the life and death of our political status. I am afraid, my Hon'ble friend Sir George Lowndes may say again that we were indulging in exaggerated language. But, my Lord, I do believe that this Bill will to a large extent tend to the disruption of our political status. My Lord, I shall, therefore, very briefly just urge my objections to this measure.

"My Lord, nothing remains now. The struggle is over. We have reached the end, and in a few moments, as my Hon'ble friend Mr. Sastri said, this measure will become the law of the land. We have fought to the utmost of our power against this obnoxious measure, we have fought to establish on a permanent footing, to maintain, as I said, that memorable right, to maintain the British tone of administration of justice; but failed, failed I grieve to think owing to the organized official opposition, the opposition of men whose forefathers laid down their lives to inaugurate it. Nothing in the soul-inspiring history of your nation impresses me so much as that incident in the reign of King Henry IV when the Chief Justice sends the Prince of Wales who became later King Henry V, to jail for contempt of court. That, my Lord, is symbolical of the tone of your administration of justice. This we tried to preserve against encroachment by the descendants of the very men who established it.

"In this combat, this unequal fight, we have lost all along the line, lost heavily. How many of the 185 amendments that stood in our names have been carried, have been accepted by Government. How many or how few of these few again are material, are anything more than trivial matters. My Hon'ble friend Mr. Hogg has just now said that when he supported the motions of the Hon'ble Mr. Banerjea on the last occasion, he hoped that concessions to us would really be appreciated but he grieved to find that although very many modifications had been introduced by the Select Committee we were as unreasonable as ever. I appeal to him to tell me what important modifications worth the name have been introduced. I appeal to him to see whether there

are not still Parts II and III which authorise the executive to usurp the functions of the Judge, to punish a man without any trial, by searching his house, by arresting him without a warrant, by interning him or externing him as they please, and by denying him every sort of safeguard that is usually allowed in a criminal case, by preventing him if they consider necessary from following his avocation and earning a livelihood. And does my Hon'ble friend Mr. Hogg think that he would prescribe these conditions for his own country, or even Ireland? Now, my Lord, in this unequal fight as I have already said we have failed, but yet I grieve not there are defeats which are more glorious than victories, and who can read the history of this debate impartially, read our proceedings and not feel impressed by the fact that all along right was with us and might with the Government. I do not mean indeed physical force, but the force of numbers of opinions artificially obtained by your mandate, not the considered opinions of the English officials, as my Hon'ble friend Sir George Lowndes said the other day. You cannot say that—you have not put them to the test; you did not accept my challenge to withdraw the official whip and allow the officials to vote just as they pleased. We have therefore lost, my Lord, and I grieve not. This defeat of ours will stand out as better than a victory. Therefore I said, my Lord, the other day that it would have been better for all concerned, infinitely better for the official members, if you had passed an Ordinance in your executive capacity and not passed an Act in this Council and let the world believe, that it was passed with the free opinions of this Council. I do not think anybody will be deceived by this. My Hon'ble friend Sir William Vincent considered that it was ungenerous on my part to say that, but is there any doubt about it, my Lord, that the Act which is being passed in this Council is passed simply because you have the power to pass it, not because it represents the considered judgment of all the official members even? And, my Lord, say what you will, there can be no doubt that this measure will remain on the Statute as a permanent record of your failure. I say, my Lord, it will remain as a permanent record of the proof of the bankruptcy of British bureaucratic statesmanship. After 150 years of British rule, you confess that you are unable to govern the gentlest nation on the face of the earth by law, and you have to take recourse to a lawless law. My Lord, Lord Canning did not require such a law even in the times of the Mutiny.

"One other remark I wish to make, my Lord, and I have done. My Hon'ble friend Sir George Lowndes said: 'The other day that we had one more argument, which really put into plain language, was the threat of agitation; that is an argument to which no reasonable Government can give way. I venture to think that it is in India exactly what the politicians choose to make it.'

"My Lord, for the present I shall not dispute this; I say this, that although I am sceptical about this, that the politicians have power to control an agitation like this under the circumstances which have been created, I accept it, and I say I am quite prepared and am very anxious to do all I can to follow the advice which is implied in the Hon'ble Sir George Lowndes' observations and try to check the agitation. My Lord, I do not pretend to be a leader, I am not one, but still I say I am very anxious to do all I possibly can to check agitation. I will communicate with my constituents, address the young men in my part of the country, but I want arguments with which I may meet their objections against the policy of the Government. I confess I have failed to find any, and I shall be grateful if the Hon'ble Sir George Lowndes and the Hon'ble Sir William Vincent will dictate to me the arguments that I am to use. I will take them word for word and communicate them to the public. My Lord, I say here, standing in this Council before your Excellency, that I shall follow no party, no leader, but my judgment, and if you will enable me to meet the objections of my constituents and the public, my humble services, for what they are worth, will be entirely yours. My Lord, this is not bluff, not mere camouflage, but I wish to show my good faith. I wish to refer to the action which I deliberately took the other day in Simla with regard to a motion that was very much condemned in the country; I refer to the Resolution about the contribution of £45 millions for which I [illegible] of the opposition of the public in the teeth of advice and

opinions of friends whom I look upon as teachers. My Lord, I thought it my duty to support that measure and to give my vote for it, and not only my vote, but to strengthen it by my speech. Why did I do it? Was there any reward, present or prospective? Was it the result of any compact with any Member of Government? No, my Lord, I felt it to be my plain duty to stand by the Government during the time of war in every measure that was required for the successful prosecution of the war. Tell me in the same manner how I can meet the arguments that will be brought against the action you have taken in this matter and I say, my Lord, my humble services will be entirely at the service of the Government. I will do my best to check the agitation, but I fear, alas! there are no arguments. I am not in the position of the Government of India who, when inconvenient questions are raised, can remain silent; that will not do, I shall have to furnish arguments to meet the objections which the very objectionable course Government has been pleased to adopt have raised. I know this measure will be passed in a few moments and I join my voice with the eloquent appeal of the Hon'ble Mr. Banerjea to save the country from the dangers ahead, by appeal to your Excellency withholding your assent to the Bill.

"With these few words I oppose the motion that the Bill be passed."

3-4 P.M. **The Hon'ble Rai Bahadur Krishna Sahay:**—"I am afraid I cannot add anything to the very forceful and eloquent pleas that have been put forward by my friend the Hon'ble Mr. Banerjea asking your Excellency's Government to withhold your hands yet from the passing of this Bill; but if that is not to be, and if this Bill must form part of the Statute-book of India, but as a temporary measure and to meet grave emergencies, my faith in the innate sense of British justice is not shaken thereby; my faith in the solemn pledge of your Excellency's Government, repeated so often in the course of the debate in this Council, that the operation of this Bill will be limited to anarchical and revolutionary crimes is not displaced. My Lord, I venture to think that your Excellency's Government will not be insensible to the emphatic protest that we have lodged against the principles of the Bill and its provisions in detail.

"If reasons of State compel you to enact this harsh measure, I am confident that you will see to it that it is limited in its application to the purpose for which it was enacted and does not travel by a hair's breadth beyond it, to suppress legitimate political activities in the country as is feared. My Lord, after all everything depends upon how a particular law is administered, why it is put into motion, how its proceedings are conducted, and how its provisions are enforced. It is after all these questions which matter.

"I hope and trust that your Excellency's Government and, under your wise guidance, Local Governments will so administer this measure as to inspire confidence in the integrity of your motive and of your purpose in enacting it into law."

3-7 P.M. **The Hon'ble Maharaja Sir Manindra Chandra Nandi:**—"My Lord, I have given my most anxious consideration to the provisions of this Bill and their bearings on our rights as a people and on our public life, and I feel that I would not be doing justice to myself and to my constituency if I gave a silent vote opposing the passage of this Bill in this Council to-day. My Lord, there can be no doubt of the fact that it is a drastic measure, the like of which it would be difficult to find in the civilised jurisprudence of our generation. There may be times, my Lord, when even drastic laws may be wanted for the peace and security of a country. But, fortunately, we are now passing through very peaceful days and do not appear to have very troublous days before us either. Then, my Lord, I will beg of you to remember that, though security of life and property may be one of the primary functions of the State, the security of private and individual liberty is none the less one of its fundamental duties. Whatever modifications the Select Committee may have been able to introduce in the Bill, it still remains a great menace to the liberties of the people. My Lord, I cannot understand the wisdom of the policy which has inspired this legislation on the eve of the grant of responsible government to this country. It is really very unfortunate

that the Government and the people do not see eye to eye with each other on such a momentous issue as this, and, if your Excellency will permit me a bit of plain speaking, I will tell you why we look at this question from a different point of view. Under this Bill, when enacted into law, very large powers, almost amounting to a blank cheque, will be given to the police. My Lord, you are probably aware that there is no love lost between the police and the people in this country, and for very good reasons. In all other parts of the civilised world, the police is the servant of the public. Unhappily, in this country, perhaps owing to the fact of an alien system of administration, the police has become, and still retains the position of, the master of the public. My Lord, when you remember the education that most of these men have, the classes of people they come from, the pay and allowances they receive, and the atmosphere and environment in which they live,—when we remember all these,—you cannot expect these men not to abuse the powers you put into their hands. I do not hesitate to say that nearly three-fourths of the grievances of the people against British rule are connected with the treatment they receive at the hands of the police. Under these circumstances, our people naturally dread any additional powers in the hands of this service, and I have no doubt this Council will admit that, in spite of the attempts made in this Bill to save people from police highhandedness, there will still be very large powers left under it in the hands of these people. After all, the prosecutions and all executive actions based on this Bill will ultimately depend on police information, which more often than not are likely to be coloured by ignorance and dishonesty. My Lord, the bulk of our opposition to this Bill is inspired by this dread of the police. As I have said, in no other part of the world would such a Bill be wanted, or, even if passed, would be so much dreaded. I feel, therefore, compelled to join my feeble voice in the condemnation of the present Bill, and, I am sure, my Lord, you and this Council will not read my vote amiss."

The Hon'ble Dr. Tej Bahadur Sapru:—"My Lord, your Lordship's name has, during the last two years, been so honourably associated with the desire to introduce reforms into this country, that I feel very sad that a measure of this drastic character, which has provoked so much agitation and so much bitterness in this country, should be passed in your Lordship's time. 3-11 P.M.

"My Lord, the last 20 years in this country have been years of great political tension, but I venture to think that never before, even during those 20 years, has there been so much political tension, so much public excitement, so much agitation, as during the last few weeks that this Bill has been before the public in this country. My Lord, from one end of the country to the other, what is it that we find at the present moment? Men of all shades of opinion, politicians of all schools, combining together to enter their emphatic protest, in unqualified language, against the passage of this Bill at a juncture like this. Well, if this is the attitude outside the Council Chamber, what do we find has been the attitude of the non-official members in this Council? Every one of us, be he a moderate, or be he a member of any other political school, has joined together to protest against this measure and earnestly to impress upon your Lordship and your Lordship's Government the unwisdom of the course which the Government are determined to pursue on this occasion. My Lord, it would be very interesting for any outsider to ask why it is that the non-official members of this Council with all their professions of sympathy with the Government, with all their readiness to co-operate with the Government, have combined to enter their protest against a measure of this character, a measure the professed object of which is to protect the country from anarchy and revolution? My Lord, it may also be asked in a similar fashion why is it that all the official members have combined together to vote for this Bill? Why is it that the Government are determined to pass this Bill in spite of the united voice of its non-official advisers? Is it that the non-official members of your Lordship's Council are devoid of common sense? Is it that they are friends of anarchy and disorder? Is it that they are afraid of doing their duty by their country at a critical juncture like this? Or is it, lastly, that all

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the wisdom, all the patriotism and all the foresight are gathered together on the Ministerial Benches in this Chamber?

"My Lord, I venture to submit that the more one reflects upon the whole situation, the more is one impressed by the idea that it is the belief in the supremacy of the reign of law which has been established under British rule in this country which is responsible for this strength of feeling all over the country.

"My Lord, during the course of the debate we have often been reminded of what happens on the Continent. Continental institutions, continental pieces of law have been held up to us as an example in regard to certain provisions of this Bill, but, my Lord, every student of constitutional law and constitutional history knows wherein it is that English law differs from Continental law. My Lord, even at the risk of citing an authority for a proposition which is absolutely superfluous, I would venture to remind the Council of what a very celebrated writer on Constitutional Law says with regard to the position in England as compared to other countries. My Lord, Professor Dicey says :—

'Yet even if we confine our observation to the existing condition of Europe we shall soon be convinced that the 'rule of law' even in this narrow sense is peculiar to England or to those countries which, like the United States of America, have inherited English traditions. In almost every Continental community, the executive exercises far wider discretionary authority in the matter of arrest, of temporary imprisonment, of expulsion from its territory and the like, than is either legally claimed or in fact exerted by the Government in England; and a study of European politics now and again reminds English readers that wherever there is discretion there is room for arbitrariness and that in a republic no less than under a monarchy discretionary authority on the part of the Government must mean insecurity for legal freedom on the part of its subjects.'

"My Lord, in another passage, which is probably more apposite to the nature of the present Bill, the same learned writer says :—

'Suppose for example that a body of foreign anarchists come to England and are thought by the police on strong grounds of suspicion to be engaged in a plot, say, for blowing up the Houses of Parliament. Suppose also that the existence of the conspiracy does not admit of absolute proof. An English Minister, if he is not prepared to put the conspirators on their trial has no means of arresting them or of expelling them from the country.'

But, my Lord, it may very well be said 'Oh well, that may be the feeling, the consciousness in England, it is not the feeling or the consciousness in India.' May I, in all humility, venture to tell your Lordship and your Lordship's Government that if there is one thing more than another which reconciles the people of this country to British rule it is the belief and the consciousness that every man must have his due under the law. You may go from one end of the country to the other; you may go through the villages; and yet the highest tribute you will find the people of this country paying to British rule is—'This is British rule; there is the reign of law everywhere; each of us is entitled to the protection of the law.' That is the feeling, my Lord, in this country. Every one feels security in personal freedom. Everyone feels secure that if he has committed any offence, he will be tried according to law and not arrested according to the sweet will of the executive. My Lord, it is this consciousness, this belief in the supremacy of law that this measure is hurting on the present occasion. It is causing uneasiness in the public mind, that instead of following the established traditions of British rule in India, the present Bill is introducing a spirit which is wholly foreign to it and which if allowed to go on unchecked may lead us into a very dangerous position.

"My Lord, I am fully prepared to believe that no action will be taken under this Bill light-heartedly. I recognise that the Hon'ble the Home Member has times out of number, in the course of this debate, given us the assurance that this Bill is not being passed to cope with ordinary political agitation, that it is merely intended to cope with anarchists and revolutionaries in this country. I give him full credit for that assurance, and I am prepared to believe him. But, my Lord, experience in the past has been bitter. We know, as a matter of fact, that certain measures which were passed for certain definite objects have been applied to certain other purposes. At any rate, that

is the feeling in the country. You cannot shut your eyes to that. And we know, my Lord, also from experience, that the placing of such large arbitrary powers in the hands of the executive is in itself a very objectionable principle. My Lord, throughout the debate there has been one important omission on the part of the Government Members, and that is to convince us and the country that the present legal machinery has completely broken down. My Lord, I am not one of those who have questioned the findings of the Rowlatt Report. I did not do so in my speech at Simla, and I still, after careful consideration of the whole situation, hold that the report is based on solid evidence. I am prepared to give the fullest credit for honesty of purpose to those learned Judges, but the acceptance of those findings of fact does not involve the necessity of accepting those recommendations. When you come to the Chapter dealing with the recommendation in the Rowlatt Report, my Lord, you fail to observe that there is any positive evidence to be found anywhere there to the effect that the present legal machinery has failed, or that the law as it stands at present cannot cope with it. My Lord, it has been said 'Oh well, we are passing through critical times, or at any rate critical times may arise and therefore it is best that we should be fore-armed'. In the first place, my Lord, I take exception to the executive being fore-armed in anticipation of a danger which may or may not arise some time later. At any rate, the danger which you apprehend is not so very obvious that you should be justified or entitled to take such large and extensive powers. In the next place, my Lord, what I submit is this, that even in England when critical times arise and when some strong measures are proposed to be taken and the executive is armed with certain extraordinary powers, there are ordinary legal remedies open, either at the time when a man is taken under arrest, or subsequently. Now, so far as that is concerned, the present Bill provides for no such remedies either at the time when a man is taken under arrest or put under confinement, or at any subsequent time. Let us face the situation boldly and squarely; and if we do face the situation, it seems to me that the measure is of a very extraordinary and arbitrary character. The mere fact that the Government proposes to apply it to certain persons who are undoubtedly, as everyone of us will admit, enemies of this country, is not enough to dispose of this larger issue. My Lord, I was very glad that the Hon'ble the Home Member said what we have all along been saying, that he recognised that the present measure alone could not cure the evil. My Lord, I would go a step further and say that in no part of the world have repressive measures been able to uproot any evil which has arisen in the body politic permanently. They may be a good cure for the time-being; but the disease is there, and it is liable to recrudescence.

"Well, my Lord, my Hon'ble friend, Sir William Vincent, hinted at the forthcoming reforms. I do sincerely trust and hope that the balm of reform will heal the wound. But, my Lord, whether those reforms will be up to expectations, whether they will be anything like what your Lordship has recommended, or whether they will fall short of even what your Lordship recommended—all that is on the knee of the gods. I sincerely hope and trust that it will be recognised by those responsible for the government of this country both here and in England that nothing short of a very large measure of reforms, and a fulfilment of those promises or of those pledges which have been held out to us, will reconcile the country to the situation which has grown from year to year.

"My Lord, on those grounds I must oppose this motion."

The Hon'ble Sir Verney Lovett:—"My Lord, I should like to endeavour to reply to some of the apprehensions and anxieties of my Hon'ble non-official friends. The majority of them deplore the murders, robberies and bomb outrages committed by the revolutionary gangs as much as we do, but at the same time they oppose measures which in a stronger form than is now proposed have been proved by experience to be efficacious in preventing such crimes. This apparent inconsistency has been explained by the Hon'ble Mr. Jinnah, who, I am sorry to see, is not here to-day, in words which I understand to mean this—that if the Government would spread its nets as widely as it would be able to spread them, if this Bill came into active operation it would 3-25 P.M.

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no doubt stop revolutionary crime, but would do so at the cost of depriving innocent persons of liberty. Mr. Jinnah also said that for the faults of a few violent revolutionaries Government would be casting a slur on the proved general loyalty of India. I would like to reply to both these arguments. As regards the danger that the active operation of the Bill would bring to young men of the political classes, it is hardly necessary to point out that the tribunals by which accused persons would, in that contingency, be tried for anarchical outrages would be tribunals of the highest strength and authority. This is what the Rowlatt Committee recommended. And in considering the degree of danger likely to arise from internments to be anticipated if so troublous a time comes as that for which this Bill attempts to provide, we all know that of 806 persons interned or detained as State prisoners by the Government of Bengal last year in circumstances carefully investigated by Mr. Justice Beachcroft and Sir Narayan Chandavarkar, only 6 were recommended for release. Now under the provisions of this Bill non-officials would be members of the investigating authorities in all cases of internment. It is thus obvious that particular precautions have been taken to prevent any mistakes whatever in future. I would like to invite the attention of Hon'ble Members to paragraphs 13 and 14 of the Beachcroft-Chandavarkar Report. The whole paper is worthy of close reading. Its clearly reasoned exposition of facts is not in the least affected by Sir Narayan Chandavarkar's subsequent letter to the press. It bears strongly on what the Maharaja of Kasimbazar has said about the police. It contains remarkable testimony to the nature of the work of the police in cases of revolutionary crime. I will quote two sentences: 'We are satisfied that the police have taken care to see that the confessions they have obtained are true and have been helpful. We have come across cases which show that sometimes the police have been over-cautious in that respect'. In paragraph 11 of their report the authors explain why the police have to be particularly cautious in such cases. They write: 'The temptation to which a police officer is exposed of extorting confessions, true or false, in the case of ordinary crime is very much less in the case of revolutionary crime. The risk which the police run of certain exposure is greater in the latter than in the former'. They amplify this argument by pointing out that unlike ordinary crime revolutionary crime is collective and continuous in its operation. Individual outrages do not stand by themselves and any recorded confessions are for a long period subject to the sifting process of truth. This particular point is elaborated in the third clause of paragraph 35 of the Rowlatt Report. Police work in revolutionary outrage cases is carried on not only at great personal risk, but, if in the least crooked, at great professional risk. Moreover, I would ask the Council to consider dispassionately whether Provincial Governments and their executive subordinates, magistrates and police superintendents, are really likely to recommend that this Bill be brought into active operation for any but the very gravest reasons. My own pretty long experience of executive administration makes me sure that they are not; that should the need be imperative it would be unwelcome in the highest degree. In the first place, any recommendation of action of the kind provided for will be viewed by superior authority with strong disfavour unless justified by unanswerable necessity. In the second place, should action be taken it would certainly encounter bitterly hostile criticism. In any case it would be most disagreeable and would entail heavy additional labour where there is ample labour already. The acute anxieties of my Hon'ble friends are, in my humble opinion, unjustified either by facts or probabilities. No doubt here and there, in the past, mistakes have been made, or officers have acted wrongly or Criminal Investigation Department officials have been foolish or obtrusive. This was bound to happen when they were faced with grave outbursts of an unprecedented form of crime. Officers are human beings like other people. The greatest care should always be taken to safeguard legitimate political activity from Criminal Investigation Department attentions. But the Rowlatt Committee after detailed inquiries found remarkably few police mistakes in the long history of revolutionary crime and the Beachcroft-Chandavarkar Tribunal came to a similar conclusion. To take such mistakes as there were as a reason for abandoning precautions of proved efficacy against a renewal of predatory and sanguinary terrorism would be a proceeding unworthy of a sane Government.

"I pass to Mr. Jinnah's second argument, which was that this Bill, for the faults of a few hundred revolutionaries, casts a slur on the general loyalty of India. That argument has commended itself to other members. I am grateful for this opportunity of pointing out that the Report of the Rowlatt Committee is most careful to emphasise the general loyalty of India, to put the numbers and efforts of the revolutionaries in no more than their really small proportions. Well, my Lord, as one of the writers of the Report I can say that this consideration was directly present to our minds. I can point to strong internal evidence of the fact. I will give two instances.

"What but this was the main object of paragraph 160 which contains a brief summary of the difficult position of Indian Muhammadans in November 1914 and the fact that as the Committee wrote 'In the main Indian Muslims may justly claim credit for the part which they have played'. Again what was the object of, paragraph 66 'Summary of conclusions'? The object was to put all the revolutionary movements in their precise and proper proportions, and to emphasize that each had as we said 'been overcome with the support of Indian loyalty', even though 'in dealing with conspiracies so elusive and carefully contrived Government had been compelled to resort to extraordinary legislation'.

"That the authors of the Rowlatt Report did clearly demonstrate the general loyalty of India was noticed by our colleague Pandit Madan Mohan Malaviya in his Congress Presidential Speech. He quoted part of the passage to which I have just now referred and said as follows:—

'The loyalty of the country generally was emphasised by the attempts made by very small sections of the population to create trouble.' He went on to plead 'Let not the misdeeds of a small number of misguided youths be pitted against the unswerving loyalty of 300 millions of the people of India'. That is the argument put forward by the opposers of this Bill, and if your Excellency's Government in framing the Bill had been prompted by any desire or intention to put the crimes reported by the Rowlatt Committee into scales, to weigh them against the general loyalty of India during the war, and to find the loyalty wanting, the argument would be justified. But in fact neither the Rowlatt Committee nor your Excellency's Government had any such desire or intention. What the Committee intended to show and showed was simply this, how such noxious crimes had been perpetrated by the revolutionaries, how widely they had cast their nets and how difficult it had been to prevent and thwart their operations. The Committee went on to suggest measures for thwarting such operations in future, these measures your Excellency's Government felt compelled to adopt, and, in framing them has all along earnestly sought the co-operation of our non-official friends. Our friend Mr. Surendra Nath Banerjea has informed us this morning that had the Government preferred to take stronger measures, had they proposed to re-enact the Defence of India Act for a further period and to use copiously the old Regulation of 1818, all would have been well. I do not think that he seriously means the Government to suppose this, or that if on the publication of the Rowlatt Committee's Report the Government had proposed to prolong the operations of the Defence of India Act, our friend would have calmly acquiesced. But to return to my main argument. What has been emphasised on the Government side in these debates has been not accusations against Indian loyalty but the desirability of saving inoffensive and loyal Indians from the predatory and criminal operations of a section of their fellow-countrymen. I have already invited attention to some of these operations, and I think that if any of the present opposition had suffered themselves from one of these enterprises, if they had lost a relative or even a large sum of money, we should not have heard the term 'Black Bill' in this Council. Mr. Jinnah questioned the accuracy of my assertion that if terrorism and anarchical crime attained such success in part of Great Britain as they attained recently in Bengal, they would be driven out by methods as drastic as, or more drastic than, the Bill under discussion. I repeat and emphasise my assertion. Never would the British Government or the British people, for any consideration, tolerate the existence of revolutionary outrage and terrorism in any part of their own country. As regards Ireland I am not an expert. I have visited the country only three

times on short visits, but when I was there I did not observe particular similarity between the fairly homogeneous people and easy communications of a country not so large or populous as many a division in some provinces of this country and the many and mixed masses and races, the enormous distances and the defective communications of India. My Lord, I venture to ask my non-official colleagues to place some confidence in the intentions and objects of Government in undertaking and carrying through this piece of legislation. If I may venture to say so, your Lordship's Government has in a marked degree deserved that confidence. It has proposed a political advance of a most liberal description; and even in times past the record of the British Government in India has received singular tributes from some of its severest critics. A little over two years ago Mr. Jinnah in addressing the Moslem League at Lucknow said that the British Government 'while retaining absolute power of initiative, direction, decision, had maintained for many decades unbroken peace and order in the land, administered even-handed justice, brought the Indian mind through a widespread system of western education into contact with the thoughts and ideals of the west, and has led to the birth of a very great and living movement for the intellectual and moral regeneration of the people'. That is not a bad record after all. Your Lordship had been Viceroy for eight months and had as is well known already devoted anxious thought to the satisfaction of Indian political ambitions. In every measure you have sought the advancement of India. On every occasion you have tried to enlist Indian co-operation. In dealing with this very prevention of revolutionary crime from the beginning you sought Indian co-operation. You appointed two Indians to the Rowlatt Committee; and if in dealing with the recommendations of that Committee your Government has had to act independently of Indian support, it has done so with keen and obvious regret. In no respect has it failed to deserve far more generous treatment in this matter than anything that it has hitherto received.

"My Lord, we have been told that the passing of this Bill will lead to an agitation. Agitations in this country almost invariably inflame racial feeling between peoples whose interests are really identical. They are liable to produce a long chain of consequences which must be bitterly regretted by their authors. They excite and upset uncritical youths, and have in the past started such on the disastrous road which leads to crime and ruin. The Government of India must always strongly wish to avoid agitations, but if, when it has to face indefeasible obligations to shield the rising generation from criminal influences, obligations to protect the lives and properties of its loyal servants and peaceful subjects, it were led to renounce these responsibilities through fear of consequent agitation, the future of India would be gloomy indeed. For it would tend to be dominated by the most violent and unscrupulous section of political opinion. My Lord, we have been given to understand by some of our non-official colleagues that the enactment of this Bill will mean danger to India not from anarchists and revolutionaries, but from the vagaries of Special Tribunals of High Court Judges and the petulance and over-eagerness of the executive. It seems to me that in view of the actual facts, and in view of the careful provisions of this Bill, such arguments are unworthy of their authors, for in reality, I do not say of intention, they play round the real issue. It is all very well to say that anarchical crime in India is partly political and that therefore its principal remedy is political amelioration. That argument is all the weaker because in past political amelioration and conciliation have been tried without producing any substantial effect on anarchical crime.

"How far did the Morley-Minto Reforms and the alteration of the partition of Bengal avail to stop revolutionary crime? These measures were thought well of in their day by some of my Hon'ble friends. Moreover, political amelioration is in prospect now, political amelioration on a scale which was thought impracticable only a few years ago. This is known to us all. But the issue before us to-day is not what form political amelioration shall take. The issue is—are we going to take effective precautions against the revival of murders, robberies and bomb outrages, or are we going to do nothing now but see if they claim more victims? The recent debate in the Bengal Council

warns us that if we do not take the first course, we run considerable risks of a revival of these disasters. The investigations and conclusions of the Rowlatt Committee entirely substantiate this warning. I have already emphasised that, however far off and remote such dangers may seem to some of my Hon'ble friends, there is a class of persons, mainly Indians, to which such dangers are neither far off nor remote. These are not in the least interested in speculating on the particular form of idealism which actuates the persons who may feel impelled by patriotic sentiments to shoot or rob them. But they are interested, very much interested, in the practical prevention of such outrages. Should this Council take no steps for such prevention, and should our inaction be followed by revolutionary crime, all the deploring in the world would neither absolve us nor console the victims of our apathy."

The Hon'ble Rai Bahadur B. D. Shukul:—"My Lord, I rise to oppose this motion and when I do so, let me assure your Lordship that I am fully alive to the responsibility of my position as an elected representative of the landed aristocracy, a class having a real stake in the country, and when I oppose this motion I do so in the hope that the Government will yet see its way to take back the Bill even though at this belated stage. From the time of the inception of this Bill, we the non-official members of this Council, one and all, elected as well as nominated, tried our level best to dissuade your Lordship from passing this Bill into law at every stage. But unfortunately to no avail. The Government is all powerful. The official majority is decidedly on your side. You can propose any Bill you like and get it passed in the manner you deem fit. But allow me to say that an attitude like this could neither secure to you the co-operation of the non-official members of this Council nor the sympathy and support of the people whom you are here to govern, and I need not emphasise the fact that any measure which you insist upon enacting and enforcing against the general wish of the country, is bound to defeat its own purpose and create a wide gulf between the rulers and the ruled. 3-48 P.M.

"When the Bill was introduced I sounded a note of warning against it to the effect that the Bill, inasmuch as it was intended to arm the executive with extraordinary powers in order to restrain the rights and liberties of the people, was subversive of all the accepted canons of law and justice in the civilized world, and that no nation imbued with any idea of self-respect could take the Bill lying down. I pointed out at the same time that the Bill was of an extremely drastic nature, and as such it was bound to create a widespread alarm in the country and was sure to be followed by a violent agitation, the like of which India had never witnessed before. The subsequent events which have happened since then cast the shadow of the coming events. The attitude of the official members of this honourable Council throughout the debate has not been very encouraging, and has convinced the people that the Bill is now a settled fact, and need I tell you, my Lord, what the effect of all this has been upon the minds of the people? Well, I make bold to say that it has already caused widespread dissatisfaction in the land, it has exasperated the people and if you will still persist in your present attitude, as I am afraid that you will, rest assured you will be alienating the people from yourselves completely. Violence of popular opinion is in fact growing day by day Mahatma Gandhi, that venerable saint of India, has already taken a vow of passive resistance against this Bill. It is certainly ominous. It portends the coming storm and I earnestly appeal to your Lordship to take a timely warning and avert it.

"My Lord, as a non-official member of this Council, I along with my other colleagues, did all that lay in my power to oppose the measure. As already pointed out by the preceding speakers, we requested the Government to drop this Bill altogether, but the Government did not do that. We then asked the Government to republish the Bill and that request also was not acceded to, and we then proceeded to move amendments after amendments but that too was to no purpose. Out of 185 amendments hardly more than 20 could be accepted and those too but unimportant ones. If, my Lord, the official members had already made up their minds to proceed with this Bill in spite of the united front presented by the non-official opposition in that way, then where was the necessity of undergoing all the formalities of a prolonged debate, holding sittings till late at midnight and waste the time

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of the Council for nothing? Was it, may I ask, for no other purpose than to exhibit to the world that you could treat with open contempt the advice given to you by the non-official members of the Council, who are the accredited representatives of the people and that they were here simply to record the decrees of the Executive? If so, my Lord, it was a serious blunder indeed. These prolonged and unfruitful debates instead of allaying the feelings of the people, have only served to cause the tension to become still more acute and accentuate their indignation. Meetings have been held all over the country to protest against this measure, and we are asked by our countrymen, rather commanded by them, not to associate ourselves with the passage of this Bill into law. The verdict of the country with regard to its merits is as unanimous as it is emphatic and clear. The people regard this measure as an indictment against the whole nation and are convinced that it would prove to be a grave of all their future political aims and aspirations, and they do so obviously for the reason that you place them entirely at the mercy of the executive, in quite a helpless position and the honour and prestige of any man might be at stake at any moment. We are told the object of the Bill is to put down anarchical movements. That is true, my Lord. But in the case of a repressive measure of this kind, it is not so much the law, as its abuse, that the people dread so much. After all innocence and immunity from oppression are not synonymous. They are two quite different things. A man may be innocent, yet he cannot remain immune from oppression so long as a measure of this kind remains in force. I have received a copy of the protest which has already been submitted to your Excellency by the elected non-official members of the Central Provinces and Berar Legislative Council and I have been called upon by them to place it before the Council. My Lord, it reads thus: 'We, the non-official members of the Central Provinces and Berar Legislative Council, have given our most anxious and careful consideration to the Sedition Committee's Report and to the Bills to be introduced into the Supreme Legislative Council, and consider that the penal provision and preventive powers under the existing law are amply adequate to deal with such crimes as may exist, and we are clearly of opinion that the proposed measures are highly objectionable in principle and detrimental to the fundamental rights of British citizens. They are altogether uncalled for'. This is a protest, my Lord, which has been signed by all the elected non-official members of the Central Provinces and Berar Legislative Council unanimously, and it will be clear to your Excellency that with this mandate in my hand it will be quite impossible for me to associate myself with the passage of this Bill into law.

"My Lord, love of liberty is as dear and sacred to an Indian as it is to an Englishman or an American. If you have your Habeas Corpus Act in England, and if in America the right of liberty is safeguarded by the very constitution of the United States, why should we Indians not have a guarantee for our own rights and liberties and why should we not be zealous of the maintenance and protection of our own natural rights and liberties, just as other nations are? No Indian could, I say, without feelings of humiliation submit to a law which should give a death-blow to the rights and liberties of a free citizen, and I sincerely wished that the all-powerful bureaucracy could have been persuaded to take the Bill back, but I find to my great disappointment and regret that they have once more refused to listen to the public voice and have thrown aside the sound and practical suggestions made by many of us and as the last resort I have to appeal to you, my Lord, to intervene and withhold your assent from the Bill, which I am sure will be passed with the help of the majority of official votes exclusively to-day. Pray do not place excessive reliance upon the infallibility of the superior wisdom of the official mind, and I beg of you to bear in mind what Lord Morley, the then Secretary of State for India, wrote to Lord Minto in one of his letters, with regard to the Government of India. He observed, my Lord, that 'As for the Government of India being the best judges of the right way of meeting difficulties in India it is quite clear that Asquith, Grey, Loreburn and even the Secretary of State are less competent hands than such queer paragons as certain of your Council, etc.? And after all have these good men been so successful in knowing and understanding all about Indian life and character that we must take their word as gospel? It is not you nor I who are responsible for *unrest* but the over-confident and

over-worked tchinovniks who have had India in their hands for fifty years past'. To my mind the present Bill, my Lord, is but an illustration of what Lord Morley observed. Here you have an official Bill which introduces a novel departure from the constitutional procedure in the criminal law of the country. It legalises inquiry and trials *in camera*, deprives the accused of the benefit of the legal advice, does away with all the existing rules and regulations of evidence, and withholds the right of appeal and so on. We the non-officials in one voice opposed it and do still oppose it. The whole of the country is up against it. But the Government will not mind the public opinion and have its own way at any cost. The public feeling has been deeply stirred and widespread dissatisfaction prevails throughout the country. Who knows to what position all this might lead to, and who will be responsible for that, certainly not we but the authors of the Bill themselves? The situation, my Lord, is not only becoming serious but grave and your Lordship alone can save it.

"The Bill is not only drastic in nature but wholly uncalled for and above all quite un-British. I do not therefore so much regret the Bill itself as I do regret, and regret painfully, the fact of the association with it of your Excellency's name for which we already possess an affectionate regard and a very great admiration, associated as it is with the noble scheme of reforms which India expects to have very shortly. My Lord, this measure will come and go as it must. It cannot stand very long. I for one decline to accept it as a settled fact. I have known of many a settled fact in the past which have been unsettled, and the Bill which is to be passed into law in such a great hurry and in the teeth of such a solid strong opposition from the people, is bound to defeat its own purpose and die a premature death. If at present the Government on its part is determined not to yield to the wishes of the people, the people on their part are also determined not to take the Bill lying down. Such a state of things will not and cannot continue very long and the day is sure to come when the Government will have to yield to the will of the people and the Bill repealed, but, my Lord, what is most regrettable and cannot be undone is that your name will be permanently wedded to it and that is what pains me most, and that is what your Lordship has to consider and consider very seriously. Let the reforms, you propose, come first and then if need be, let this Bill follow, but I am sure, my Lord, that that need shall never arise for such will be the soothing effect of the impending reforms. It is for this reason, my Lord, that just a decade ago when the Government of India referred to Lord Morley the question of introducing a legislation on the lines of Irish Crimes Act here in India, Lord Morley deprecated the very idea of it, and I cannot do better than quote his own words, just to indicate what his feelings were in one of his letters addressed to Lord Minto. What he said was this:—

'As for legislating on the lines of the Irish Crimes Act, it is pure nonsense. He seems to refer to Forsters Act (not Balfours of 1887) and that was about the most egregious failure in the whole history of exceptional law. If I know anything in the world it is the record and working of Irish Coercion since 1881 and the notion in the present Parliamentary circumstances and with me of all men in the Universe as Secretary of our being a party to a new law authorising 'detention without trial' is really too absurd to be thought of. The venerable Regulation of 1818 is not easily swallowed and a version is a dream that a shrewd man like 'B' should be too wide awake to nurse in his head for a single minute. However, he evidently will not be in a hurry to stir for new engine of repression if he can possibly help it'.

"If these words will not appeal to you, my Lord, I do not know what to say. The present Bill is not only modelled on the Irish Coercion Act, but has gone much beyond and is drafted on more drastic lines, and if an attempt to enact such a measure was a pure nonsense ten years back I must say it is a still greater nonsense, rather a serious and a mischievous nonsense to-day, particularly at this juncture when India has proved her loyalty to be above all suspicion and when you could afford to be more generous. If a new law authorising detention without a trial was really too absurd to be thought of a decade ago, should it not be still more absurd to be thought of to-day, is all what your Lordship has to seriously consider and I shall say no more? I hope the Bill will not be allowed to be passed into law."

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4-2 P.M. **The Hon'ble Pandit Madan Mohan Malaviya:**—"My Lord, the Hon'ble the Home Member has tried to explain the position of the Government as clearly as he could in regard to the measure now before us. He has told us that the Government have not been unreasonable and that they have accepted many amendments which they considered to be important. My Lord, we recognise that the Hon'ble the Home Member must think, and other Members of the Government must think that the Government have been reasonable, and it is a matter of regret to us to have to think that the Government have not been reasonable. We also regret that, when the Government think they have made important amendments in the Bill, we should think that the amendments are not of the importance which they would have us attach to them. One of the amendments to which the Government have agreed is the one limiting the operation of this measure to a period of three years. But the Rowlatt Committee never recommended that the proposed Bill should be a permanent measure. In paragraph 178 of their Report they said:—'A further question may arise as to whether the whole enactment should be limited to a period of years'. It is a matter of satisfaction that the Government have accepted the suggestion and have limited the Bill to a period of three years. But nobody could have imagined that a Bill of this character was going to be a part of the permanent Statutes.

"The second point urged has been that the Government have accepted many amendments which were urged by Members. I regret to say, my Lord, that, useful as several of these amendments are in themselves, they do not touch the principles of the Bill, do not affect its character as a drastic measure which affects the liberties and lives of the people. The Hon'ble the Home Member said that the Government was face to face with the findings of fact of the Rowlatt Committee. My Lord, I acknowledge that the Rowlatt Committee have stated the facts so far as they appeared to them with fairness and with a scrupulous desire not to put the case higher than the facts, according to their information, justified.

"I make this acknowledgment all the more gladly again—we have done so on previous occasions—particularly because of the reference made by the Hon'ble Sir Verney Lovett to that portion of the Rowlatt Committee's Report in which they have stated that the revolutionary movement was confined to a very small fraction of the population, and that all its plots were successfully encountered with the support of Indian loyalty. We accept these statements so far as they go, though they require to be supplemented by facts which the Rowlatt Committee have not noted. Our main differences with them arise when we come to discuss the recommendations which they have made on the basis of facts as they have found them. Now, my Lord, the history of anarchical crime, which has been given by the Rowlatt Committee, shows that it is necessary that every effort should be made to see that it is effectively kept under control and not allowed to revive. We do not here disagree. No official Member sitting here can be more earnest than any of my non-official Indian friends in desiring that revolutionary or anarchical crime shall not be allowed to revive in this country. We have sense enough to understand that no hostile attempt on the part of a few misguided youths can in the least degree affect the strength and power of the British Government. At the same time we recognise—and this is a matter of greater importance from the practical point of view to us—that some of our finest young men have been misled into the paths of crime by the action of some of the members of the revolutionary party. And we are anxious, not less anxious, nay, if I may say so without any offence, we are more anxious to save these young men from the paths of evil than any non-Indian can be. We acknowledge the liberal and generous desire on the part of our English fellow-subjects to save our young men from evil; but we cannot agree to the proposition, for it will not be true, that our non-Indian friends can be more anxious than we Indians are for the welfare of our countrymen.

"My Lord, we are all agreed, then, that this anarchical and revolutionary crime is to be combated and kept down; we only disagree as to the means which are needed to keep it down. The Hon'ble the Home Member admitted that the Bill is a very drastic measure, but he

appealed to the authority of the Rowlatt Committee. The Rowlatt Committee is our authority, said he. We constituted a very capable body; we entrusted the case to them and asked for their advice. They have advised us what we should do, and we are going to stand by that advice. Now, my Lord, with due respect for the members of the Rowlatt Committee, I make bold to say that they were not an infallible body, and that Judges are not the only persons whose opinions matter where the lives and liberties of the people are concerned. Other persons, also though they do not possess the same qualifications as Judges and administrators, are entitled to look at the matter from the point of view of the public and to press their points of view upon the consideration of Government.

"My Hon'ble friend said that the application of the Bill will be confined to special circumstances and to special persons. True. Nobody could imagine that a measure of this character would not be confined to special circumstances and special persons. We are at one with our official colleagues in desiring that where special circumstances call for special measures being taken to deal with crime such measures should be taken; we are at one with them in desiring that when any person is guilty of complicity in revolutionary or anarchical crime he should be punished; our desire is not that persons showing that tendency should not be arrested and kept under effective control; our sole contention is, our whole anxiety has been—and it is here that we differ from our official friends—that the procedure to be adopted for achieving these objects shall be judicial procedure, which will be a safeguard against the mistakes and errors of judgment, not intentional, absolutely unintentional, but which may all the same be deadly in their effect so far as the persons affected by them are concerned. It is there we differ.

"My Lord, the Hon'ble the Home Member then departed, if I may say so without disrespect, from his ordinary duty as a Home Member and took to sermonising us, non-official Members, as to what we should do as citizens. He preached to us about our duties and responsibilities, exhorted us to come forward courageously as witnesses and jurors, and to co-operate in crushing the movement. My Lord, we are willing, absolutely willing, to co-operate with the Government in crushing the movement, but considering that there are not a few Indian Members here who have grown grey in the service of their country they may be trusted to understand their duties and responsibilities as citizens of this Empire.

"My Lord, my Hon'ble friend took credit—and I join with him in offering that credit if it may not be presumption on my part to do so—to the Government of India that they were unwilling up to the last moment to enact the Defence of India Act. I think, on the other hand, that the Hon'ble Member will be willing to give credit to Indian Members for having supported the measure

The Hon'ble Sir William Vincent:—"Not the Hon'ble Member who speaks."

The Hon'ble Pandit Madan Mohan Malaviya:—"My Hon'ble friend states what is not true, my Lord; I did support the measure. The other day the Hon'ble Law Member referred to the fact that I had moved 25 amendments and he implied that that meant opposing the measure. I corrected the Hon'ble the Law Member then, and I regret to have to correct the Hon'ble the Home Member who was present here on that occasion, now on such a simple fact. My Lord, it means that there are some people who would not be satisfied by the love a man may offer them. You must not only love them but love their dogs as well, or you would not be entitled to any credit. That is the creed of some people. My Lord, I refuse to subscribe to that creed. It was my duty while offering support to a general measure in critical times, a measure which was in many respects obnoxious and repugnant to my sentiments if, in recognising the critical needs of the time, I offered my support to the measure, it was still my duty to fight step by step to shear the measure of what I considered to be unnecessary or excessive provisions, which were likely to hurt the people too

much without benefiting the Government at all. I am not sorry, I am not ashamed that I moved amendments to the Defence of India Act. But the fact stands that even after losing those amendments I supported the measure. I give credit to Government for having refused to move too quickly in that matter, and I claim credit that we Indian Members recognised the situation and supported the Government.

"Now, my Lord, that period of stress and trial is over. We are now happily near the time when we hope to see peace signed, a peace that will endure, and that will secure the ends for which blood has been shed and treasure sacrificed, and not installation again of Prussian militarism in another form ; my Lord, it is at this stage that this Bill has been introduced. Let us try to understand the position. What did we Indians expect would happen after the war? There was a great deal of talk of co-operation during the period of the war. Indians, my humble countrymen, went forward to fight for His Majesty in the defence of the Empire. Some of the Ruling Princes offered their personal services in the cause of the war. Every one among us, who could, contributed his own mite, either in speech or writing or in money, to the extent of his power. I do not think that anybody would have the face to say that India had not done her share in this war. Many English statesmen, and your Excellency yourself, have repeatedly acknowledged the part that India played in the war. My Lord, this comradeship in arms, this continuation in a common effort, these contributions to a common cause, gave rise to great hopes and feelings. It gave rise to feelings in the minds of English statesmen, including many members of the Civil Service here, that Indians must be treated better in the future, that the disabilities under which we labour must be removed, if not entirely at once, partly at least, but steadily, and must be removed for good. My Lord, the hopes which the people of India entertained were of a high order. Your Excellency and your noble colleague the Right Hon'ble the Secretary of State for India laboured for several months to produce a scheme of reforms which would introduce a new order into India. We looked forward with hope and joy to the dawn of a new day. We expected these reforms would include the redress of long standing grievances arising out of distinctions of race and creed ; that the disabilities of race under which we Indians laboured would be removed.

"The Special Session of the Indian National Congress that met at Bombay in August last expressed the mind of the people as to what they expected. Before dealing with the question of constitutional reforms, the Congress laid its finger on the black spots which existed on the Statute-books of India, and the Congress asked, in the first place, for a declaration of the rights of Indians to ensure that they shall enjoy the same fundamental rights and liberties which their fellow-subjects in England enjoy. One of the first Resolutions passed at the Congress ran as follows :—

'That the Government of India shall have an undivided administrative authority in matters directly concerning the tranquillity of the country, subject to the following :

'That the Statute to be passed by Parliament should include a declaration of the rights of the people of India as British citizens ;

(*a*) That all Indian subjects of His Majesty and all the subjects naturalised or resident in India are equal before the law and that there shall be no penal or administrative law in force in this country, whether substantive or emergent, of a discriminative nature ; and

(*b*) That no Indian subject of His Majesty shall be liable to suffer punishment in respect of free speech or writing or in the right of association except by a sentence in an ordinary court of justice and as the result of a lawful and open trial.

(*c*) That every Indian subject shall be entitled to bear arms subject to the purchase of a license as in Great Britain, and that the right shall not be taken away save by a sentence of an ordinary Court of Justice.

(*d*) That the presses shall be free and that no license or security shall be demanded on the registration of a press or a newspaper ; and

(*e*) That corporal punishment shall not be inflicted on any subject of His Majesty save under conditions applying equally to all British subjects.'

"My Lord, as a corollary to this by another Resolution the Congress asked, that all repressive and extra-judicial measures which exist on the Statute-book

should be repealed. The Congress urged on the Government to remove from the Statute-book immediately (that is to say immediately after peace was established) the Defence of India Act, the Bengal Regulation III of 1818, the Bombay and Madras Regulations of 1819 and 1827, respectively, the Press Act, the Seditious Meetings Act, the Criminal Law Amendment Act, and other similar repressive measures curtailnig the liberty of the subject'. It did so, my Lord, because it thought, fondly thought, that a new day was dawning upon India, that the day of doubt and distrust and dispute had passed away, and that Indians and Europeans would live hereafter in this country with greater good-will towards each other, with greater confidence in each other than had been the case in the past. It was in that spirit that the Congress urged the repeal of these enactments. It further emphasised the point in another Resolution in which it asked for the application of the principle of self-determination to India. It urged the recognition of India by the British Parliament and by the Peace Conference as one of the progressive nations to whom the principle of self-determination should be applied; and it said that in the practical application of the principle to India the first step should be (*a*) the removal of all hindrances to free discussion, and therefore the immediate repeal of all laws, regulations and ordinances restricting the free discussion of public questions whether in the press, private or public meeting, or otherwise, so that the legitimate aspirations and opinions of all residents in India may be fearlessly expressed; further, the abolition of all laws, regulations and ordinances which confer on the Executive the power to arrest, detain, intern, extern or imprison any British subject in India, outside the processes of ordinary civil or criminal law, and the assimilation of the law of sedition to that of England.

"My Lord, these Resolutions of the Special Congress clearly show what the thinking portion of the people of India looked for and hoped for after the end of the war. My Lord, it is a sad irony of fate—it has pained the hearts of many of us—that while we asked for bread a stone has been hurled over our heads. We asked for the repeal of extra judicial and repressive measures, and we find, to our grief and misfortune, that even before peace has been signed, the Government of India have hurried to introduce a measure which is a compendium of many repressive measures, and which will make the existence of other repressive measures superfluous. The Council, and the country, have been alarmed and thrown into great excitement by finding that far from conceding or even considering the very reasonable request of the Indian National Congress, at which more than 5,000 Indians were present, the Government are hurrying through legislation of a drastic character which, as I have said, is a compendium of the many repressive measures to which I have referred before. My Lord, why should it be so? Need it be so? Must it be so? The Hon'ble the Home Member seeks justification for the attitude of Government in the recommendations of the Rowlatt Committee's Report. Now, my Lord, the Rowlatt Committee have been installed in the position of Sir Oracle of days long gone by. This is not right. Let me in this connection read a few sentences from what Lord Morley said when the Criminal Evidence Bill was being discussed in the House of Commons in 1898; after urging the importance of referring the Bill to a Select Committee, so that the opinions of distinguished lawyers may be ascertained on the desirability or otherwise of the change which the Bill sought to introduce, Mr. Morley said:—

'I hope the House will not even then assent as a matter of fact to the decision of lawyers. It is a question which affects our civil rights. It is a question of the utmost importance, and though I express no opinion as to the substantive merits of the question, I do submit that in a question going so deep into the roots of our social life.' (The question whether an accused should be offered an opportunity of being examined on oath)—

'in a question going so deep into the roots of our social life, it is right that this House shall not make a change in the criminal law without taking the ordinary steps which are always taken in a measure of this character'.

"I draw attention to this weighty observation to guard the Council and the Government against attaching too much weight to the recommendations of the Rowlatt Committee; for I fear that the Government have been swearing too strongly and too much by the recommendations of that Committee.

" My Lord, it is our duty to carefully examine and analyse the recommendations of the Rowlatt Committee; also to examine a little more closely the findings recorded by that Committee. I have already said that with regard to the statements of facts made by them, so far as they go, I have no quarrel; but the statements, I regret to say, do not constitute a complete statement of all the circumstances which should have been taken by them into account. And here it becomes necessary for me to ask the Council's attention to the course of events which gave birth to the revolutionary and anarchical movement in this country. I referred briefly to it the other day ; but it is very important that I should refer to it again in view particularly of the lucid speech which the Hon'ble Sir Verney Lovett has made in support of the Bill, and in the course of which he referred to and emphasised the findings of the Rowlatt Committee.

" My Lord, the Rowlatt Committee was asked—

(1) to investigate and report on the nature and extent of the criminal conspiracies connected with the revolutionary movement in India, and

(2) to examine and consider the difficulties that have arisen in dealing with such conspiracies and to advise as to the legislation, if any, necessary to enable Government to deal effectively with them.

" Let us see what their findings are with regard to the extent—we need not discuss the nature—of the criminal conspiracies connected with the revolutionary movement in India. They have been very careful, as my Hon'ble friend on my right pointed out in his last speech, in their summary of conclusions in describing the extent of such conspiracies in their proper and precise proportions. Nobody can quarrel with them. They have pointed out that in some provinces efforts to promote such conspiracy did not take root, but occasionally led to crime or disorder. They have pointed out where they did take root. They have to some extent pointed out the causes which led to their taking root. But I regret to say that the committee did not take sufficient note of certain circumstances which gave rise to revolutionary ideas and fostered them particularly in the case of Bengal. Now, my Lord, let us deal with the case of Bengal. The Rowlatt Committee have stated that the first attempt made by Barindra Kumar Ghosh in 1903 to organise a revolutionary movement totally failed. He was wholly disappointed with the response which he received to his efforts. They further state that when he renewed his efforts after 1904 he met with greater response because 'circumstances occasioned by certain Government measures specially favoured the development of Barindra's plans'. They have pointed out that the University Bill was introduced by Lord Curzon in 1904, and was interpreted by Indians as designed to limit the number of Indians educated in English and thus retard English advance; that the opposition to the Bill was intensely bitter, and that while the dispute was in progress the Government projected the partition of the provinces. They have further pointed out that it was the agitation that attended and followed on the latter measure that brought Indian discontent to a climax and afforded a much desired opportunity to Barindra and his friends. They have not, I regret, in my opinion, brought out the intensity of that agitation and the strength of reason and feeling that lay behind it. They have also not brought out how the measures adopted by the Government to put down agitation against the partition were directly responsible for the birth of the revolutionary movement in Bengal. A knowledge of these facts is essential, my Lord, to enable a correct judgment to be arrived at regarding the causes which gave rise to the movement and the remedies which should be applied to eradicate it. Let me briefly recall a few salient facts. It was in December 1903 that the proposal to divide Bengal was published. The proposal was strongly condemned. Within a short time several hundred meetings were held to protest against it. Not only the educated classes, but the landed aristocracy of Bengal and the European Chamber of Commerce, and the 'Englishman,' the 'Statesman,' 'Capital' and other English papers also protested against the proposal. But all protests went unheeded; the scheme was submitted to the Secretary of State and he sanctioned it. The scheme was published on the 8th.

July, 1905. It was strongly denounced at a meeting of the Bengal Legislative Council which was held a few days afterwards. When the people found that all protests and representations were disregarded by the Government, they held a big meeting on the 17th July, and resolved that all British goods should be boycotted till the partition scheme was withdrawn. After this many open air meetings were held in Calcutta, which were attended by a large number of students. A system of picketting was started. Parties of students and school-boys commenced to parade the bazaar to dissuade customers from purchasing foreign goods. The Landholders' Association declared themselves in favour of the Swadeshi movement and the boycott. The movement grew stronger and stronger every day. According to the 'Bengali' about fifty thousand people vowed in the presence of the Goddess at the Kalighat temple to abstain from buying foreign goods. The feelings in the schools and colleges grew steadily stronger. The Government then issued the circular known as the 'Carlyle circular' that no boys of any school or college should take any part in connection with picketting and boycotting or in anything else connected with the Swadeshi movement. The heads and teachers of institutions were informed that, unless they prevented such action being taken by their boys, their grants-in-aid and the privilege of competing for scholarships and of receiving scholarship-holders would be withdrawn, and the University asked to disaffiliate their institutions. They were also informed that the Magistrate might call on them for assistance in keeping the peace by enrolling them as special constables. The circular was bound, as an English paper observed at the time, 'to manufacture an army of martyrs'.

"My Lord, before the partition was actually carried out, the question was raised in the House of Commons and the Secretary of State promised to furnish Parliament with papers to enable them to form their opinion on the subject. This was taken as a promise that no further action would be taken until that had been done. But even this was not done. By another circular the police were allowed to interfere in cases where rudeness was offered to Europeans or Musalmans. Military police were brought to Dacca and Barisal and punitive police to other places. Complaints were made by the Peoples' Association to the officers of Government that these policemen indiscriminately attacked men in the streets, trespassed into houses, assaulted people, removed Bande Mataram and Swadeshi placards and labels of shopkeepers; but they were not listened to. Everywhere there were troubles with schoolboys. At Rangpur the Hindu students of the Government school left it in a body as a protest against the punishment inflicted upon some of them for having taken part in political agitation in the mufassal. But, notwithstanding all this, the determination to carry out the partition was adhered to. The 16th of October, the day fixed for giving effect to the partition, was observed as a day of mourning, both in Calcutta and in many places in the mufassal. Shops were closed; food was not cooked. A hundred thousand people walked through the streets of Calcutta bare-footed in the garb of mourning, and they assembled at a great public meeting and vowed to remain united in their opposition to the partition.

"My Lord, all that agitation was disregarded; notwithstanding all the opposition and protests, the partition was carried out, and Mr. J. B. Fuller was appointed Lieutenant-Governor of East Bengal. From the moment he took office he decided to take up a strong attitude. Within a few days of his assuming the reins of Government, he published what is known as the 'Lyon Proclamation' in which it was said 'The wish of the Government expressly is that anybody can buy any article he likes. Any one who compels another against his wish to buy country-made goods is guilty under the law. Though such offences are not cognisable by the police, yet it is the duty of the police to prevent such offences, and to bring the same to the notice of the authorities, because there is every likelihood of such offences leading to breaches of the peace'. Thus instructed, the police began to molest people who in their opinion were asking others to abstain from the use of foreign goods against their wish. The circular created a volume of indignation. But nothing daunted, Mr. J. B. Fuller issued another circular which is known

as the 'Lyon Circular' which ran as follows: 'Gentlemen who own, manage or conduct educational institutions should be advised to discourage the students of their colleges or schools from taking part in processions or the like, and should the Principals or Head Masters of Government institutions find themselves unable to control their students or find their subordinates fail to render them due assistance in exercising a proper control, they should report the circumstances Should the management of an aided institution refuse to accept these principles, its grant will be withdrawn. And if Mr. Fuller learns that any educational institution is a focus of political agitation or the disturbing excitement of political controversy, he will consider it expedient in the interest of the State to debar its students absolutely from Government service'. This was followed by the Bande Mataram circular by which District officers were asked to prohibit the shouting of 'Bande Mataram' in the streets. This again caused deep resentment among the people. The police also began to interfere with the freedom of Zamindars in joining Swadeshi movements, and to avoid further disturbances the Superintendent of police appointed teachers and some of the masters and managers as special constables in accordance with the order already referred to. The matter was taken up to the High Court, where the prosecution was withdrawn; but it created ill-feeling and resentment among the people. In several places boys and school masters defied the circulars. Many boys were prosecuted and some of them were flogged and sent to jail. The harsh punishment inflicted on a school boy named Sushil Kumar Ghosh was held by many to have been responsible for the first bomb used in Bengal, which was evidently intended for the Magistrate who punished the boy, but killed two English ladies. Hundreds of boys were expelled from schools. The managers were compelled to dismiss school masters and scholarships were withdrawn. A question was put in this Council about the actions of the military police and about certain orders issued by the Lieutenant-Governor. But the Government of India practically refused to inquire into the serious allegations. Then, my Lord, Sir Bamfylde Fuller made a tour in Eastern Bengal, and in the course of this tour he invited people to come forward to support the Partition. Some responded to his invitation; others did not. A great deal of bad feeling was created among the two great sections of the community. There was a widespread feeling created by the action of the Lieutenant-Governor in Eastern Bengal that the Government favoured Muhammadans against the Hindus; the better classes of Muhammadans were not affected by it; but the lower classes were greatly affected and there were outrages in several localities. In December 1906, a prominent Muhammadan gentleman of Dacca went to Calcutta to promote pro-partition agitation. During the time of his visit a riot took place in Comilla. The police refused to interfere with the rioters and the Magistrate refused to take notice of the incident. Many of the officers were in the city, but they were not in the place where the riot took place to stop it. The trouble was only stopped when a Muhammadan was shot dead on the public roads. For this three Hindus were sent up for trial and convicted by the Sessions Judge; one was sentenced to be hanged and two to be transported. The High Court quashed this conviction as against all the three men observing, in the course of their judgment, that with a view to bring the charge home important evidence had been withheld. They said that the best and the most reliable witnesses would have been the Commissioner of the Division, the Magistrate of the District, and the Superintendent of Police, but that none of them had been called by the prosecution. 'The non-appearance in the witness-box of the Commissioner of the Division and the Magistrate of the District has not been explained; and we have every reason to believe that Superintendent Byrne, who could have given evidence on this as well as many other points of importance, was purposely withheld from appearance at Comilla or the court at the trial'. Within a month of this incident, another serious outbreak took place at Jamalpur. There a Muhammadan mob attacked the Hindus at a bathing festival for which large numbers of people had collected from different parts of the country. There was an idea prevailing among the people that the Government of Sir Bamfylde Fuller favoured Muhammadans against the Hindus. It is this that led the lower classes of Muhammadans to commit excesses against Hindus. A Muhammadan mob publicly announced that Government would give them protection to loot the

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property of Hindus and to marry their widows in the *nikah* form. Many Hindus left the place in a state of panic. Here also the Hindus had to use fire-arms in self-defence. There was similar trouble in several other places in Eastern Bengal. It was this state of things that led Hindu youths there to deem it necessary to arm and organise themselves for self-defence, as they found that they did not receive sufficient protection from the authorities. They betook themselves to physical culture and to learn the use of the native staff-quarter or *lathis*. This was advocated and encouraged by all respectable people. In a speech by one of the political leaders it was said: 'We should now return *lathis* for *lathis*'. They had not Government as their object; the movement was started in self-defence to protect themselves against attacks by the lower classes of Muhammadans from which they had not found protection from the authorities whose duty it was to protect them. Several cases came before the High Court and in one of these one of the judges said:

'It is plain beyond controversy that at or about the time to which we are referring considerable ill-feeling existed between Hindus and Muhammadans, and the evidence further points to the conclusion that in Jamalpur, and possibly in other places also, infuriated Muhammadan mobs had to some extent got beyond the effective control of the authorities entrusted with the duty of keeping the peace. There was thus a widespread panic among Hindus that they might be insulted or outraged by Muhammadans with impunity, and also a belief that the authorities were either unable or unwilling to afford them adequate protection. It is not necessary for the purposes of the present case to investigate whether and how far this panic was well-founded; nor is it pertinent to the present inquiry to determine who were to blame for the highly strained feeling between the Hindus and the Muhammadans. I am only concerned with the fact, firmly established by the evidence, that there was a widespread panic amongst the Hindus and that means of self-protection were deemed necessary by men of intelligence and respectability.'

"Now, my Lord, that was the origin of the desire of young Hindus in Eastern Bengal to organise themselves for self-protection. It was this which led to the formation of societies throughout the province for the purpose of encouraging physical exercise, drill and *lathi* play as means of self-defence. The young men banded themselves as 'national volunteers'; they rendered useful services in stopping the rowdyism of the Muhammadans of the lower classes, in protecting women and children, in keeping order at fairs and festivals, etc. The work of the societies was appreciated by the public and supported by public subscriptions. But the Government soon found reason to suspect them and declared them to be illegal. The societies were broken up. It was then that some of the young men fell into the hands of those few individuals who had revolutionary or anarchical ideas. This is how the trouble grew in Eastern Bengal. It was the Partition which was carried against the wishes of the people and the agitation against the Partition, which gave rise to activities, which were innocent at the beginning, but some of which developed or merged later into activities of a revolutionary and anarchical character. I think, my Lord, these facts should be remembered in judging of the present situation.

"I should also refer here to the part played in this connection by the police, as disclosed in some of the trials. This is another side of the shield which has to be considered in dealing with these questions. My Hon'ble friend Sir Verney Lovett has spoken of the good work done by the police. I have no quarrel with him about that, but at the same time, my Lord, we must not shut our eyes to the fact that there have been failures on the part of the police to do the right as some of the cases which have come before the Courts have shown.

His Excellency the President:—"I should like to know whether the Hon'ble Member is speaking on the general motion or on Mr. Patel's amendment. If the Hon'ble Member intends to speak only once on the motion that the Bill be passed, I will not call him to order because I do not wish to take a point of order unnecessarily: but the Hon'ble Member must remember that really he is not in order. I understand, however, that he will not speak again."

The Hon'ble Pandit Madan Mohan Malaviya:—"I am speaking on the motion of the Hon'ble the Home Member that the Bill be passed into law."

His Excellency the President:—"As well as on the amendment?"

The Hon'ble Pandit Madan Mohan Malaviya:—"The amendment was out of my mind; I was not thinking of it.

"My Lord, it is well to remember what these trials have disclosed in order to judge whether the police were in any way to blame for that situation that developed in Bengal, and also to understand the apprehensions of the people from police and executive action. My Hon'ble friend Sir Verney Lovett has, I fear, failed to realise these apprehensions sufficiently. May I suggest, my Lord, that the Council might now adjourn in order that Members may have tea."

His Excellency the President:—"We are not at all impatient. The Council does not meet again till 11 o'clock to-morrow."

The Hon'ble Pandit Madan Mohan Malaviya:—"I did not suggest that with reference to your Lordship. I am sorry if that was the impression you got. I suggested that probably many Members are anxious to rise for tea."

His Excellency the President:—"They can always leave the Council."

The Hon'ble Pandit Madan Mohan Malaviya:—"Very well, it does not affect me.

"Now, my Lord, it is important that the Council should understand the reason for the apprehensions which we Indians entertain of wrong action being taken, on the reports of the Police, by the executive authority. It is important for this purpose to refer to some of the trials which took place in Eastern Bengal. In one of these trials arising out of the riot at Comilla, to which I have already referred, the High Court quashed the conviction against three men and remarked that important evidence had been kept back by the prosecution. The High Court quashed the conviction as against all the three men, observing in the course of their judgment, that with a view to bring the charge home against them, important evidence had been withheld by the prosecution; and, my Lord, it is important to bear in mind who the three persons kept back were. They were the Commissioner of the Division, the Magistrate of the District, and the Superintendent of Police.

"I will refer to another case, and that is known as the Burah dacoity case which occurred on the 2nd June 1908. In this case the dacoits attacked a house in Burah in the small hours of the morning, proceeded with their booty to the neighbouring river, killing two men on their way, continued their course in a boat along the river in the day time, a distance of about 70 miles pursued by a succession of villagers, including a Head Constable and a Police Inspector, drawn from the villages and huts through which they passed. After the pursuit had lasted throughout the day, the dacoits made their escape at nightfall. All the accused who were tried for this dacoity were acquitted. The Police were working under the extremely favourable conditions which are referred to showing that the dacoits were under observation of many persons including policemen. Yet when they sent up the case for trial, the High Court Special Tribunal constituted under Act XIV of 1908, rejected the testimony of the witnesses, acquitted all the accused, and said :—

'We have come to the conclusion that improper influences have been at work and that the evidence is tainted with that deplorable interference which so enormously increases the difficulties and anxieties of the Courts of Justice, for if the taint be present who can accurately estimate the extent? There had been much to give rise to the apprehension of this mischief, but apprehension gave way to conviction when a certain witness came into the dock.'

"The High Court further found that depositions which favoured the defence were withheld, and the identity of one of the witnesses was suppressed for some sinister purpose.

"I submit, my Lord, these are some of the circumstances which excite alarm in the minds of the people. I will refer to one other case which is

known as the Midnapore case. That case particularly shows the necessity for cross-examination to test the value of confessions and of the evidence of approvers. Unfortunately, it is sometimes the case with the police that whenever an offence is committed, they try to implicate in it all persons, who in their opinion should be deprived of their liberty, and it is not surprising that sedition trials in Bengal were noted for some such attempts. In the Midnapur case 154 persons, Rajas, Zemindars, Pleaders, among them leaders of the District Bar, men of high position in society, including those who were very prominent in the constitutional agitation which was carried on against the partition, were accused of a conspiracy to murder a district officer. The Advocate-General withdrew the prosecution against all except two or three of the accused who had made confessions, and the latter were placed on their trial. They were convinced by the Sessions Judge and acquitted on appeal. The judgment of

The Hon'ble Sir William Vincent :—"They were convicted or convinced?"

The Hon'ble Pandit Madan Mohan Malaviya :—"They were convicted. I am very thankful to my Hon'ble friend.

"They were convicted by the Sessions Judge and acquitted on appeal. The judgment of the learned Chief Justice is a terrible indictment of the system of administration of justice in British India. The man who confessed was in custody for many days. Pressure was put upon him by the Police to confess, but he refused to make any incriminating statements. His mother was persuaded to press him to follow the advice of the Police, as otherwise their properties would go and his brothers and old father would be arrested. Pressure was also put upon the father by the District Magistrate and the Police to persuade the son to confess, but he resisted it. The man was removed from the undertrial ward to a separate cell of small dimensions where he was kept in solitary confinement, a form of prison treatment which is by law strictly limited even in the case of convicts and is not in accordance with rules; and in common with all who were kept in these condemned cells, as they are called, he was awakened every three hours. Even after such harsh treatment he held out. Then the threat was really carried out. His father, an old Government servant who had retired on pension, was arrested, according to the words of the District Magistrate himself, 'at my suggestion.' His son wept when he found that his father was arrested. The Chief Justice found, and it is difficult to say what else he could find, that the arrest was a move towards getting from the accused the statement he had hitherto withheld. After that he soon confessed. The confession was recorded by a Magistrate in the presence of the District Magistrate at whose instance he was arrested. The latter intervened actively by putting and suggesting questions on the strength of documents and information with which he had been previously furnished and which were withheld from the accused. The confession was disbelieved and the man was acquitted on appeal. The informer put forward by the prosecution in the original proceedings was tried and sentenced for perjury. The defence in this case also contended that the finding of the bomb in the house in which the accused was staying was due to the Police placing the bomb there. The Chief Justice remarked that the evidence did not enable the Court to form a pronounced theory, but he was not prepared to set aside the contention of the defence in view of the methods pursued in the case. This was on the 2nd June 1909. There was a civil suit which brought no redress.

"My Lord, other cases may be cited from the Reports like the Howrah Gang case in which the High Court found, among other matters, that Police pressure had been exercised to secure confessions, false statements by approvers and other kinds of false evidence; and that they had kept back statements made to them under the plea, not believed, that they had disappeared. But I shall refer to only one more case.

"This was a case in 1914, just before the Defence of India Act came into operation in which a police officer was killed by a bomb explosion. Two other police officers and another person were severely wounded or injured. The prosecution case was that one of the accused actually threw the bombs. Two of

the Judges were convinced of the absolute innocence of the accused; a third Judge said: 'My deliberate conclusion is that the endeavour made to establish a connection between the innocent lad and a dastardly crime by means of evidence tainted in a large manner by manifest untruth and manufactured incidents has been completely unsuccessful.'

"My Lord, it is difficult on reading the judgment of the Chief Justice to avoid the inference that the Police to defeat the probable allegation that the pistol had been placed where it was found, endeavoured by false evidence to establish the contention that the weapon was not discovered until a responsible European officer was present. In many respects the Judges found that the story given by the witnesses was false.

"The nature of the evidence often relied on to prove seditious intent is remarkable—association in school, games, sports, *lathi* exercises in public, wore a sinister aspect. Kindly acts were brought up against an accused. The Chief Justice observed in one case:—

> "It would have been a misfortune if this argument had possessed the force claimed for it, for I can imagine nothing more deplorable than that young men should be driven into churlishness through the fear that their kindly deeds may rise up in judgment against them."

"My Lord, I regret to find that there is no reference to this deplorable feature of what is usually called Police evidence in the Report of the Sedition Commitee. So far as they are concerned, the Report of the Police Commission, under the presidency of a Civilian who was once the Lieutenant-Governor of Bengal, and these judgments need not have been written. They do not find that conditions have changed or that there have been improvements of such a character in the personnel of the Police that the Commission's observations do not apply. On the other hand, the judgments of eminent judges leave the uncomfortable impression that the police evidence continues to be untrustworthy.

"Now, my Lord, I draw the attention of the Council to these facts, these painful facts, in order to show that there is justification for the apprehensions of the public that the legislation which is proposed to pass into law if put into operation, will expose the people, in the circumstances existing in this country, to very great danger. None of us wants that a man who is really guilty should escape punishment, but we are all anxious that the innocent should not suffer. It is for this reason that we are offering all this opposition to the Bill; it is for this reason that we are still attempting to persuade the Government to look at the matter from the point of view of the people, of the innocent men who may be involved.

"Now, my Lord, let me summarise the position as regards Bengal. There was no revolutionary crime in Bengal before the Partition. After the Partition, owing to the agitation carried on by the people against it, repressive measures were adopted. The Partition and these measures combined created an intense feeling against the Government, and that drove some young men to join anarchical and revolutionary movements.

"My Lord, I submit with confidence that if Lord Curzon did not unfortunately leave the country at the time he did, if he had remained in the country after the Partition, it is possible, it is probable that being the able and strong-minded man he was, he would have put his foot down early upon the unwise repressive measures which followed the partition of Bengal, and might have forbidden at an early stage the many foolish measures of repression which were adopted in East Bengal and might have saved the situation. Judging from the fact that he had the strength to punish a British soldier for an outrage, one may well think that if he had stayed on in the country, he would not have allowed repressive measures to be adopted to put down the agitation against the Partition. His successor naturally required greater time and felt greater delicacy in dealing with the situation. When Mr. Fuller took charge of the office of Lieutenant-Governor, he began to issue circular after circular which added fuel to the fire of excitement which the Partition had created. The attitude he took up of pitting the Muhammadans against the Hindus and touring through Eastern Bengal and giving people the impression that everybody who opposed the Partition and supported the swadeshi movement would be severely dealt with added fuel to the fire. The result was not only that there was intense excitement among the young men, but also that some outrages took place on

the part of the lower classes of Muhammadans, which drove some of the young men among Hindus to organise themselves for self-defence. It was in this condition of things that revolutionary ideas found a suitable soil in Bengal. It was these incidents, the mistakes of the Government, that converted the soil of Bengal which was unsuitable to the growth of revolutionary ideas in 1903, into a soil favourable for the growth of such ideas. These events have a great lesson for the Government and the people. Here again to-day the Government is carrying a legislative enactment through in the teeth of the opposition of the people. Their opposition both in this Council and outside the Council has been strong and unanimous. But the Government are not prepared to show deference to that opposition. As one of my friends has said before this, we do not know what the aftermath will be, what the evil effects of a measure like the one before us being passed in the teeth of this opposition of the people will be. In this connection, and before I leave this point, I should also like to say that we should remember the character of the young men who were drawn into revolutionary and anarchical crimes in Bengal. The Rowlatt Committee have themselves stated that these were young men of the *bhadralog* class. They did not belong to the criminal class. It was the special circumstance which arose out of the partition of Bengal and its after-effects which drove them into criminal ways. If therefore the Government will rely again too much upon repression, they will rely upon what in the past aggravated the evil it was meant to cure.

"It has been said by more than one of my official friends that the Defence of India Act has proved to be an effective measure, and it is for this reason that the Government want to continue to have the powers which that Act gives them. Now, my Lord, there is no doubt that the Defence of India Act has proved to be an effective measure. It is a matter of sincere satisfaction that crime has been put down. But we must remember the circumstances under which the crime arose as well as the circumstances in which crime was put down. To the revolutionary and anarchical tendencies which had developed in Bengal owing to special circumstances, the war gave a special stimulus. But the war is over and we are now living in happier times. The effect of the victory of the Allies must be allowed to bear fruit, to produce its natural and inevitable result. My Lord, our objections against the Bill divide themselves into three classes. Our first objection, as has been again and again pointed out, is that no such legislation is needed. The Government have already under the Defence of India Act Rules power of the same character, in fact more drastic power, than what is proposed in the Bill. The Government have power under Act XIV of 1908 similar to the power they propose to take under Part I of this Bill. Why this duplication, why this triplication of powers? It has been said that when the war ends, the Government should be in a position to exercise the same powers which it has under the Defence of India Act. Why will not Government wait and see the effects of these several years of war and of the months that will intervene until the expiration of the Defence of India Act? Have you any reason to think that the young men who have been interned under that Act have not been influenced by the trend of events? You have already released two-thirds of the men who were interned. You are going to release more and more from day to day. Why have you released them? It is only because you found that the young men had changed; their ways and thoughts have altered, and there is not the same apprehension from them that there was when you interned them. That being so, there is no reason for you to think that this good process will not continue, and that the young men will not come under better and better influences? The Hon'ble the Home Member took credit that the Government were doing all that they could to reclaim these young men. I am glad they are making those efforts. I hope they will persevere in those efforts and redouble them. If you are adopting measures to reclaim these young men, and save them from falling into the path of wickedness, what reason have you to think that your efforts will not be successful. There is no proposal in this Council that you should let them go at once. Without the Bill before us you are exercising the powers you have under the Defence of India Act. Let there be an earnest endeavour to reclaim the young men during the months that follow, ask for co-operation from all the leading men

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from Bengal, of whom you have so many here in this Council, in reclaiming these young men in the months that lie before you. Let it be explained to them that things have altered and are going to alter in a larger way than they expected, and I venture to say that your efforts will not be fruitless. But suppose these efforts fail, suppose in the case of some of these young men the efforts fail, well then you can proceed against them under Regulation III of 1818.

"My friend the Hon'ble Sir Verney Lovett said he was rather surprised that several Members should have suggested that the Government might continue to exercise their powers under the Defence of India Act, that it might even be extended, if need be beyond the period of six months after the war, and that the Government might, if necessary, act under the powers which Regulation III of 1818 conferred upon them. My Lord, the meaning of that suggestion is, that we had the Defence of India Act Rules for the period of the war. It is not that we desire them to be continued, nor is it that we desire Regulation III of 1818 to be used. But what we feel is, that this is a special emergency measure, that must come to an end in a certain period of time, and if it was necessary, to extend it for a few months. The evil is known and it will affect, by the very hypothesis of the case, only those men who are at present interned under the Defence of India Act Rules. If there should be any need for the extension of the Defence of India Act Rules to deal in this drastic manner with any individuals, then you have the powers under Regulation III of 1818. You cannot deal with a vast number of men under that Regulation, and that Act, and there is no need, we hope there will be no need, to deal with a large number of men under that Regulation. That is the reason for the suggestion that the Government should exercise the power it possesses under the Defence of India Act Rules and Regulation III of 1818 for dealing with the situation. Our objection to the proposed Bill is of three kinds.

"In the first place then we object that the legislation is unnecessary. In the second place, we object to the substance of the legislation. In the third place, we submit that the proposed law is excessive and unnecessarily drastic.

"My friend, the Hon'ble Sir Verney Lovett, showed great anxiety that revolutionary and anarchical crime should not revive. We share that anxiety with him; we honour him for having that anxiety; we, in the United Provinces, know that he is absolutely honest in his purpose and his convictions, and we respect him for it. We agree with him in his desire that revolutionary and anarchical crime shall cease whatever evils may be necessary to make it so. But where we disagree with him is in the adoption of the particular legislation which is before the Council. And here, my Lord, I want to draw attention to one other point. What is this proposed legislation? It is not legislation of a permanent character. The Government have recognised the wisdom of limiting it to a period of three years, and my Hon'ble friend has concurred in that decision, so far as I can judge from his attitude. It is not a Statute which will live for ever on the Statute-book. It means this that, in the opinion of the Government, and in the opinion of my Hon'ble friend, a drastic repressive legislation is needed for a certain period of time, namely, a period of three years. As the Defence of India Act is still in force, that period must be reduced by the time which will expire between this Bill becoming law and the expiration of six months after the end of the war. Therefore, the proposed legislation is to continue in effect for, say, two years and a half or about that, or it may be for full three years. Now, my Lord, my friend and the Government are anxious that this legislation should be passed for a period of three years or about that time. They want it because they think that during the next three years some of the young men who are at present restrained under the Defence of India Act Rules may still require to be kept under control. And what is the nature of the restraint which they impose? It is a restraint which does not differ very much from the restraint to which they would be subjected under the existing law. It differs only in some respects from the restraint which is imposed under the existing law. The difference will be

only in the method by which the restraint will be imposed. Our differences relate not so much to the nature of the restraint which may be imposed on any individual, but to the method by which it is to be determined that that restraint shall be imposed. So also with regard to Part I, our disagreement with the Government arises not on the point that a man who is guilty of any revolutionary or anarchical crime shall be tried and punished, but as to the method by which the guilt and the punishment shall be determined. The Government want that the punishment should be inflicted in the case of such individuals by the special procedure which they provide in Part I of the Bill. We point out that in the first place you have that special procedure already provided in the existing law, No. XIV of 1908. And in the second place, we point out the defects of that enactment, and we urge that even if you think it is necessary to enact that law again you are going too far; you are going beyond what is necessary even to meet your professed object. We have not heard a single answer, my Lord, in this Council to the many earnest appeals which have been made in support of the amendment that, where one of the three Judges who are to decide a case, is doubtful about the guilt of the accused, the accused should have the benefit of that doubt. I have not heard a single argument advanced which would justify the view which the Government have taken up, the very strange, the very sad, view which the Government have taken up, that where one of the three High Court Judges appointed to deal with an accused person is clearly convinced that the accused is not guilty, the man must yet be convicted, sentenced and punished according to the view of the remaining two. I have not, I submit, heard a single reason advanced in support of that view. So also in the matter of an appeal, we have not heard one argument advanced which would justify this excessive desire of the Government to secure a speedy trial. There has been no answer to the fact that a man being hanged by two months earlier or by two months later, may be a wrong for which there will be no remedy, may be a sin which will rest upon the Government and those who support it if the man should be innocent. We have heard no argument advanced on that head.

"My Lord, we have fought hard against another provision which has been introduced into the Bill, namely, the liberty to an accused to be examined on oath. We have urged that, that provision should not be introduced in India in the present circumstances and in the Bill before us. There was a great deal of heat shown by one of the official Members in discussing that measure. Now, my Lord, I regret to think that my friend the Hon'ble the Law Member does not realise the intensity of our feeling on that question. He did not seem to realise that it is in the interests of the innocent alone that we are anxious that this provision should not be introduced into this law. The Hon'ble Member referred to the quotations I had made from certain debates in Parliament, and he accused me of not having put both sides of the case. As I pointed out the other day in the quotation which I read from Mr. Morley's speech, both sides of the case were very fairly brought out. It was not necessary for me to quote all the opinions which had been expressed upon the subject. I myself made it clear that that opinion in England was still somewhat divided at the time that the measure was passed in 1898; but that the experience of the last 20 years had satisfied English lawyers that it was a beneficent and humane change. I only wish to point out to your Lordship how difficult it is for my friend to realise our exact position unless he would look at it carefully and cautiously. I just want to read another passage from the debates which will show that what I said that day was right. The quotation that I made from Mr. Morley's speech the other day was taken from the debate of 1888. To-day I draw attention to a quotation from the debate held on the 25th of April 1898 on the Criminal Evidence Bill. Said Mr. Morley :—

'I have listened very carefully to nearly all the speeches to-night. Before the Session begun the subject interested me, and I took the opportunity of gathering the opinions of legal authorities in Ireland and in this country, and I am bound to say that though I should certainly be rash to commit myself to the proposition that the principle of the Bill is not a humane and beneficent change, I have heard quite enough and read enough to satisfy me that this House and the House of Lords have not had a full opportunity of testing all the evidence which is to be given on this important subject. This is a matter which I should hope will never affect, personally, Members of this House, but all changes affecting the

criminal law are changes which this House ought to regard with the utmost jealousy. The Hon'ble Member for Warwick and Leamington put the case in a way which ought to weigh greatly with the House. He said that all of us are more or less educated persons, more or less able to take care of ourselves in cross-examination, but this is a change which will not affect, speaking generally, persons in our position, but humble and illiterate persons. Now, Sir, I have no desire to resist the Second Reading of the Bill, but the real point to-night is whether this House has had an opportunity of so testing authoritative opinion on this most difficult and important subject as to justify us in passing it. When we have the right honourable Gentleman the Member for Plymouth, who speaks with such great authority, on the one side, and the late Attorney-General on the other—men of great authority and experience, giving entirely different views—I submit that it is a fair thing to accept the solution—and it is the only solution which will induce me to vote for the Second Reading—that it shall be referred to a Select Committee after the Second Reading, where the House will have an opportunity of hearing judges, counsel of various degree, and other persons competent to speak—for example, men like Sir George Lewis. I hope the House will not even then assent as a matter of course to the decision of lawyers. It is a question which affects our civil rights; it is a question of the utmost importance; and though I express no opinion as to the substantial merits of the question, I do submit that in a question going so deep into the roots of our social life it is right that this House should not make a change in the criminal law without taking the ordinary steps which are always taken in a measure of this important character.

"In the case of a measure of far less importance than this, no Ministry would dream of pressing it. They might introduce it, but they would not dream of pressing it on the House in the face of a body of adverse opinion such as we have evidenced to-night."

"Now, my Lord, that, I suppose, will effectively satisfy the Hon'ble the Law Member that my statement was correct and that his criticism of it was not proper.

"My Lord, there is another matter to which I may refer in this connection. I made a reference to the case of Ireland because it gave support to my contention that the proposed change should not be introduced in the present circumstances of India. I was told that what happened in 1838 or 1898 was no guide to the feelings of the Irish people now. That may be so; I do not know, but I believe that it is a fact that this provision of law has not been extended to Ireland, up to this date. That should be a sufficient answer to my Hon'ble friend.

"Now, I refer to these facts, my Lord, to show that there has not been that careful examination of the very drastic proposals contained in this Bill which this Council ought to insist upon before a measure of this character is passed into law. As there has not been that examination, I oppose the motion that the Bill be passed into law.

"My Lord, as regards Parts II and III, our objections have been so eloquently and repeatedly expressed that I will not detain the Council long about them. Briefly put, the substitution of executive authority for judicial authority is a very vital matter to us and to those in whom we are concerned. We therefore offer our strongest resistance to this substitution. Now, my Lord, there is only one criticism to which I shall attempt an answer in connection with this matter. It has been said by my official friends that they have found that the Defence of India Rules have been very efficacious in putting down men who were inclined towards revolutionary or anarchical ways, and that is why they want that that power should be continued in their hands. My Lord, it is important to note what difference our proposals would make in the exercise of those powers by Government. I pointed out the other day that before proceeding against any individual, the Local Government must have some information against him. My Hon'ble friend on my right (Sir Verney Lovett) reminded us to-day that out of 806 men who had been interned in Bengal, Sir Narayan Chandarvarkar and Mr. Justice Beachcroft had found that there had been no mistake made in the case of 800 persons. Now, if the Government can obtain such evidence in so large a number of cases as has satisfied two Judges of the character of Sir Narayan Chandarvarkar and Mr. Justice Beachcroft, I should like to know what prevents the Government from putting that evidence before a Magistrate for a judicial investigation. I should like to know why the Government hesitates to put that evidence before one of its own Magistrates and to let him try the matter in a judicial way, as he can try it under the existing provision of the Code of Criminal Procedure. Why do the Government want to take away a case like that from

the cognisance of a Magistrate, and to entrust it to a non-judicial investigating authority? I have not found any satisfactory answer to that. My Lord, it may be said that before the investigating authority the rules of evidence, as laid down in the Evidence Act, would not apply. Well, that is a point which justifies our opposition to the proposal. We do not see why the rules of evidence should be departed from in a case where a man's life or liberty may be concerned. We see no reason therefore up to this time why this executive authority should be substituted in the place of judicial authority; and, my Lord, we apprehend that the power given to executive authority may be misused. I quite agree with my Hon'ble friend on my right (Sir Verney Lovett) that the Government will take every care that they should not be so misused. But we cannot ignore the fact—a fact which we have found to our regret—that several Local Governments have misused the powers which were given to them under the Defence of India Act. We cannot get over that; and we apprehend that in times of excitement Local Governments may again in future misuse the powers which they will possess under this Act.

"I will refer to one matter. My Hon'ble friend in the course of his observations said that agitation in this country often gives rise to racial feelings. Now, my Lord, I do not see why agitation should often give rise to racial feelings

The Hon'ble Sir Verney Lovett:—"I said 'inflames racial feelings'."

The Hon'ble Pandit Madan Mohan Malaviya:—"Very well, inflames racial feelings. I do not see why agitation should inflame racial feelings. In some matters it may. It all depends upon the nature of the agitation. But it is an unfortunate fact that the war has not rung out the pride of place and blood. It is an unfortunate fact that we in this country have not yet come to the position where we could feel that you and we are equal subjects of the King and where all racial distinctions should be a matter of the past. But I hope that the Government will work towards that end. If they will, so far as politics are concerned, there should in future be little occasion to inflame racial feeling between the European community and the Indian community. As regards the other communities, there is every sign to show that in the great body of the people feelings are better and are improving, and I hope there will be less and less heard of disturbances of peace between other communities in the future. Now I do not know that there is another member of the Indian Civil Service more honest than my Hon'ble friend to my right (Sir Verney Lovett); and I feel sure that he honestly takes the view that agitation may inflame racial feeling. As he takes that view, it is not improbable that another man in office, another member of the same Service, may take the same view, and while the one may exercise a great deal of restraint upon himself in coming to a conclusion, the other may not, but may rush to the conclusion that the discussion of political questions which excite feelings among Europeans and Indians may be likely to foment anarchical and revolutionary crime, if any such crime exists, or is supposed to exist in any part of the Province. The apprehension is not baseless that the executive authority may take a stronger view of the connection of agitation with anarchical crimes when such crimes prevail in the province than my Hon'ble friend thinks. For these reasons we are anxious that all decisions, affecting the life or liberty of a fellow-man, should be judicial decisions. That is our whole objection to Parts II and III of the Bill.

"My Lord, I will not take up more time. I submit with very great respect that it is not wise for the Government to disregard the sentiments of the people over whom Providence has placed it to rule. The Government has the power—the Hon'ble the Home Member reminded us of it in very gentle and polite language, some other members had also reminded us of it—if the Government decide that a certain measure must be passed, they have the power to pass the measure in spite of the opposition of the representatives of the people. But, my Lord, I submit with great respect that it is not right of the Government to do so. At this era of the world's history, of the history of the British Empire

at the end of a war where so much blood and treasure has been spent in fighting for righteousness and in defence of the liberties of nations, at the end of a war during which the principle has been repeatedly proclaimed that the only government entitled to be so called is a government where administration is carried on by the will of the people, it is a sorry spectacle that the Government of India should be legislating on an important matter like this in the teeth of the opposition of the representatives of the people.

"My Lord, nobody can justly claim to be more interested in the welfare of the people of India than we Indians are. I do not quarrel with my official friends when they claim to be more concerned about the welfare of the masses of my countrymen than we imagine some of them are. We would be rejoiced if they have as much concern for the welfare of our people as we have. But will they allow us credit at least for common-sense and common honesty? Will they pause to think for a moment how it is that the various Indian members sitting in this Council, several of them men who have grown grey in the service of the country, who enjoy the esteem both of the people and of the Government why they all unite in offering opposition to the passage of this Bill? Will the Government pause to think if they are right in carrying this Bill, only by the official votes which they command in this Council? My Lord, they are not. And we apprehend that as the Government committed a great mistake in the case of the Bengal partition in carrying it out in the teeth of the protests of the people, so it is committing a similar mistake now, and we shudder to think of the estrangement of feelings between the people and the representatives of the Government which is likely to result from this attitude of the Government. It is useless it seems to hope that the Government will yet be restrained. I respectfully join with my friend the Hon'ble Mr. Banerjea, in the appeal which he has made to your Excellency that though the Bill will be passed to-day, your Excellency may yet be pleased to withhold your assent from the same, until, at any rate I would add, until the time that the Bill and the papers connected with it and a full report of the debates of this Council have been laid before His Majesty's Secretary of State for India and His Majesty has signified his pleasure relating thereto."

5-28 P.M. **The Hon'ble Rao Bahadur B. N. Sarma**:—"My Lord, I shall speak on the motion that the Bill should be passed into law. This is not a moment for anger, for bitter or harsh words or recrimination. It is a moment for sad, cool, calm, reflection. It is a question that each one of us should ask for himself as to why at a time when every one of us should be rejoicing over the victories of the Allies, at a time when every one of the Hon'ble Members here should be straining hard in the interests of their country to co-operate and appear to co-operate with the Government in every measure, at such a time there should be such hopeless discord, hopeless differences as have been exhibited during the discussions of the last few days. I take a standpoint somewhat different from that of some of my Hon'ble friends and colleagues here. I do not quarrel with the Government that they have not exercised their powers by way of Ordinance. I do not quarrel with the Government that they have not extended the period of the Defence of India Act; I do not complain that the Government has come here to ask us for permission to pass a law of this description. Nor do I ask the Government to stay their hand on the ground that there may be agitation in the country. I should not respect a Government which stays its hands solely and wholly because there may be some agitation in the country, if the Government feels that there is no escape but to face the agitation in a right and proper cause. I remember, my Lord, that my Hon'ble friend and colleague Mr. Sastri and myself were hissed and hooted when we opposed the passive resistance movement; but we braved that; and if we brave your anger or wrath or displeasure or misunderstanding of our motives, it is because we love the British connection even more dearly than you do, because it pays us to be part of the Empire much better than many of us realise. Well, then, if I do not ask the Government to stay its hand by reason of any agitation that can be threatened, what do I ask the Government to consider before it passes this Bill into law? I ask the Government

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to consider as to whether they are right, as to whether the whole people, the whole of their Indian colleagues here, of the loyalists outside, all their *ex*-judges, *ex*-members of council, are so egregiously wrong or likely to have so grossly blundered as to advise Government wrongly in a matter of this description. There may be a few disloyal men who would like to create agitation to embarrass the Government. I do not deny that. But Government should not give them opportunities, because it pays anarchists to create an agitation ; an anarchist can only live by means of agitation ; but let that pass. Are we to suppose that all these loyal supporters of the Government in and outside the Council are so unreasonable, have been so misled in their judgment as to advise Government in a particular way, when the Government feels that what they are doing is the right way ? I cannot say as to whether any suggestions that have been thrown by my friend, Mr. Sastri, that there was something behind at the back of the Government's mind not disclosed to us here, frontier troubles, conspiracies of a kind that cannot be disclosed and the like, as to whether any suggestions of that, kind could have moved the Government. I am not in a position to state that but I take it emphatically that there are none such because the Government at a time like this, when they have conquered Prussianism, and represent the mightiest nation in the world, is not likely to keep back from their own trusted advisers any movement of such a description. Well, then, I must proceed upon the materials which are available to Hon'ble Members and to the Government alike and consider that this Bill has been undertaken solely and wholly with a view to suppress what is understood by anarchical and revolutionary movements of the kind we have had in Bengal and elsewhere. The Rowlatt Committee report has been quoted often for the purpose of justifying the action of the Government, and many of us have said that we did not question many of the facts or findings of the Rowlatt Committee. But what are the facts which have been found by the Rowlatt Committee upon which the Government may act ? The facts, as I take it, my Lord, are that there is a revolutionary movement which is hostile to the British Government, to the British connection, which is anti-British. That is the only finding they have arrived at. The rest are inferences which the Rowlatt Committee ask the Government to draw from certain facts. The Rowlatt Committee is of opinion that the judicial machinery has broken down in certain particular cases ; we decline to accept that inference. Reading through the pages of the Rowlatt Committee's Report I respectfully suggest that the difficulties of the judges by reason of false evidence being placed before them has not been properly or sufficiently emphasised. Undue emphasis was laid on the fact that witnesses were terrorised. My recollection of the judgments, as I read them at the time they were passed, clearly convinced me that the Rowlatt Committee has not invited the attention of the Government in sufficiently clear and emphatic terms to the dangers that the people would be exposed to by tribunals acting upon the one-sided statements placed before them by the police, whether honestly or dishonestly, it is not necessary for us to discuss. It is because Messrs. Beachcroft and Chandravarkar came to the conclusion that most of those whose cases were placed before them deserved their fate that I hestitate to accept this motion or this Bill. If you place a one-sided version of a story before a judge or the Government the conclusion of any reasonable man must be the same unless he declines to act on such materials. It is because there is no provision in this Bill for the cross-examination or the sifting of such evidence as may be placed before the tribunals that we hold strongly to the conviction that the liberty of the subject is gravely menaced. I submit that the Government should pause and consider as to whether sufficient emphasis has been laid upon this weakness in the administration, and whether the evils have not been exaggerated with a view to arriving at certain findings. That is a point that I would respectfully submit to the attention of the Government before this Bill is passed into law. My Lord, there is one strong point of principle on which the members of this Council cannot see eye to eye with the Government, and it is this, we cannot allow the Government in a time of peace to confess that their ordinary machinery is so weak as to have broken down and that the judiciary must be displaced by the executive in order that an evil, however great it may be, may be coped with. That is a fundamental principle on which your Excellency's Government and we vitally differ.

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"We cannot allow the executive government to say 'we are inefficient, we have been inefficient and our police is inefficient, we have not been able to cope with a particular class of crime by the ordinary methods. Therefore, give us extreme powers though they might necessarily expose the subject to grave dangers in respect of his reputation, character, liberty and property.' That is a thing which I hope this Legislative Council and no future Legislative Council would allow the executive to do. There are several remedies, and these remedies must be tried and shown to have been tried before this application is made. The Government themselves have stated that they realise that other remedies should be applied. We thank the Government for the same and we feel that the reforms promised a year ago have been mainly responsible for the reduction of crime in various parts of India. We are confident that the application of remedial and reform measures alone will be a cure for these many evils. If they prove ineffectual, then is the time to come forward with any measures that may be considered necessary, but not now. My Lord, we are at a great disadvantage in many respects. The title of this Bill is that it is a Bill to cope with anarchical and revolutionary crime. One would be inclined to say 'what has come over them? why do Hon'ble Members not co-operate with the Government in crushing anarchical and revolutionary crimes?' If the Bill contained only sections embodying principles approved by jurisprudence, certainly your Lordship and the Government would be justified in reproaching us with having embarrassed and harassed you but what do we find, we turn to the pages of this Bill, I do not propose to weary the Council by describing at length the obnoxious provisions but to mention a few. It is in the power of the executive government to say what is a revolutionary movement, it is in the power of the executive government that is virtually its executive officers to say whether a man is concerned with a revolutionary or anarchical movement as they conceive it to be; the point whether an offence is connected with a revolutionary movement is not to be left to the courts but is to be decided by the executive. The investigating authority, as I have said, is to act on *ex parte* statements, the prosecution witnesses need not be produced, no opportunity need be given to the accused to defend himself, after knowing what the prosecution evidence is. Under Part III the Government has only to say that a man is connected with an offence and he stands branded with the infamy of having committed that offence, without a trial. The Government may release him if he is proved innocent, but the remedy of a civil suit is not open to him to show the world that he is an innocent man. The Government have acknowledged that it is only in one province that this particular crime exists, mainly Bengal. We have been told that the non-official members of that province have protested against the release of certain individuals; if the non-official members of that province have co-operated with the Government in that way, why should not this Bill for the safeguarding of the interests and lives of the subjects of Bengal be passed there, why bring it up here? I take exception to a remark that fell from the Hon'ble Sir Verney Lovett. He said that if anyone here had suffered at the hands of these revolutionaries less would have been said of these Bills being so black. I can only say that if a member, official or non-official, were to allow his personal suffering or inconvenience to warp his judgment to such an extent as to arrive at wrong conclusions in a matter of this kind, I should be sorry for him. I can understand clearly how officials sometimes angered at the action of those said to be connected with anarchy lose their balance of mind and their judgment.

"We do not know really what is passing in the minds of the official members of this Council, and it will be cruel on our part, wrong on our part, to say that they are acting in a way which we think is wrong. They are here to register their votes in a particular manner, and the Council has no right to judge of their views from their voting. It is the Government that has taken a particular attitude, and our remarks must be addressed to the judgment, the cool and dispassionate judgment of Government, with a view to convince it, if possible, that we are in the right and they are in the wrong.

"My Lord, it was said that Regulation III of 1818 is much more drastic than the present, and therefore it would be foolish to ask for an enforcement of that rather than of this Act. My Lord, Regulation III of 1818 can by executive action be modified in any way whatsoever the Government may think fit. Before taking action thereunder, Government themselves can appoint an investigating authority, there is nothing to prevent them from

doing it, there is absolutely nothing in Regulation III which prevents the Government from consulting a judicial officer of a particular standing. There is absolutely nothing to prevent the executive government from proceeding under the existing laws in any manner they choose. They therefore cannot claim credit for having associated with themselves an administrative machinery in arriving at certain conclusions, especially when it is open to them to discard the judgment of the investigating authority. My Lord, our opposition to this Bill is based upon fundamental and vital principles recognised by all civilised Governments. If we were satisfied that this was the only way of suppressing anarchy or revolutionary crime, we should have willingly and cheerfully co-operated with the Government. But we feel that the circumstances do not warrant such a conclusion. I should prefer any day martial law to be proclaimed in any particular area if the country is in a disturbed state, because martial law invites the attention of the whole of India and of the rest of the world pointedly to the situation. But this police law, under a normal Statute enacted after due consultation in the Legislative Chamber, is much more dangerous in its operation than the enforcement of martial law. My Lord, no circumstances have been proved to justify the action of Government in asking for such wide powers. Even if there were need as I have said, in times of peace it ought not to be open to the Government to ask for such powers supplanting and abrogating the ordinary judicial courts, forms and procedure. It is on these grounds that I base my opposition to this Bill."

The Hon'ble Sir Dinshaw Wacha:—"My Lord, through all these protracted and wearisome proceedings I have been a silent listener, and as a silent listener, of course, I was on the side of my non-official friends. But I had no intention whatever to break that silence were it not for the urgent appeal of more than one friend that I should speak lest my views might remain concealed, and that my silence be misconstrued outside this hall. Under the circumstance, my Lord, I have risen to say only a few words, and I am not going to detain the Council for more than five minutes. I am neither an orator nor a consummate lawyer. I am only a humble student of practical politics, and as a practical politician, I am going to refer to two aspects of this present controversy. Those are in reference to the consequences which a large number of persons not only in this Council, but outside it—you may call them an enlightened intelligentia—apprehend if the Bill comes to be passed. It is on those two aspects of the question that I want to speak (or rather this time to read my speech) and, I assure you, I will not take more than five minutes. As a matter of fact, there has been, of course, throughout these many days of the discussion what I call a conflict of views. The merits or demerits of the Bill from one side or the other have been threshed out at a wearisome length. They remind me of what years ago I read in Pope's 'Essay on Criticism.' 'It is with your judgment as with our watches. No two go alike, but each believes his own.' I should think, my Lord, that in the present case I realise the correctness of those lines, that each believes in his own judgment and considers that of his neighbour as all wrong, whatever that may be. 5-51 P.M.

"I cordially endorse every word of the great speech which my Hon'ble friend, Mr. Banerjea, delivered this morning with such perfervid eloquence and with such burning patriotism. He has left nothing unsaid which I could have said in my own homely language, and I do not desire to detain the Council by repeating those words of sound political wisdom to which he gave expression. I had fain hoped that your Lordship's Government would have accepted the very reasonable amendment of my Hon'ble friend, Mr. Banerjea. To me it is a matter of sincere regret that it was rejected. Had it been accepted, I have not the least doubt in my own mind that it would have proved of the greatest advantage to the Government and the public alike. The Government would have certainly been in a stronger position during the autumn Session to introduce the Bill without much ado. On the other hand, the public might have acquiesced in the opinion, one way or the other, which the highest judicial tribunals of the country might have expressed on the inadequacy or otherwise of the existing legislation to cope with anarchical and revolutionary movements. In a matter of this character, I venture to observe, my Lord, the Government should have been quick enough to attain the vision which might have enabled it to see the far-off with the clearness of the seer. The vitalising principle underlying the agitation

on this Bill should never have been allowed to be ignored as it has unfortunately been ignored. The effect of ignoring it will, I am afraid, be mischievous in the future. It would be wisdom on the part of the Government to see that no action of theirs pours the poison of disloyalty in the arteries of our national life. For, it is superfluous to say that liberty alone preserves loyalty. But as the hope of liberty diminishes, the force of disloyalty grows.

"If, as I understand to do real justice to a people is the highest act of statesmanship, then your Excellency's Government had within its power to render justice in response to public opinion as expressed by the better mind of India. I am firmly of conviction that a strong Government like the Government of India stands in no need of a drastic enactment like the one which is just going to be passed into law, even for a brief period of three years. Nothing in my opinion, my Lord, is more dangerous than an arbitrary piece of legislation like this Bill under the insignia of freedom. It has been said here more than once that this Bill is a 'lawless law,' that it is a tyrannical piece of legislation. I do not endorse that opinion at all; but I want to recall to the mind of those who have said it, that it was not A, B or C in this country who said it. It was Aristotle who said it 2,300 years ago. Then, again, Bacon has rightly reminded the shepherds of State, that is the rulers of a country, that 'the commandment of the will is greater than the commandment of force.' My Lord, I think I am correct in saying that the honours of a numerical majority belong to the Government, but the honours of arguments belong to the Non-Officials here, my Indian colleagues in the Council. Be that as it may, I heartily join my friend Mr. Banerjea in his appeal to your Lordship that you would do well to withhold your assent to this unpopular Bill, as the most exalted representative of His Majesty's Government.

"With these words I conclude my speech."

The Hon'ble Mr. V. J. Patel :—"I have nothing more to add, my Lord."

The motion that for the words "be passed" the words "by the Council be republished" be substituted was put and the Council divided as follows :—

Ayes—11.	*Noes—35.*
The Hon'ble Sir Gangadhar Chitnavis.	His Excellency the Commander-in-Chief.
Raja of Mahmudabad.	The Hon'ble Sir Claude Hill.
Dr. T. B. Sapru.	" Sir Sankaran Nair.
Pandit M. M. Malaviya.	" Sir George Lowndes.
Mr. S. Sastri.	" Sir Thomas Holland.
Mr. B. N. Sarma.	" Sir William Vincent.
Sir Dinshaw Wacha.	" Sir James Meston.
Mr. V. J. Patel.	" Sir Arthur Anderson.
Raja Sir Rampal Singh.	" Mr. W. A. Ironside.
" Rai B. D. Shukul Bahadur.	" Sir Verney Lovett.
" Mr. K. K. Chanda.	" Mr. H. F. Howard.
	" Sir James DuBoulay.
	" Mr. A. H. Ley.
	" Mr. W. M. Hailey.
	" Mr H. Sharp.
	" Mr. R. A. Mant.
	" Maj.-Genl. Sir Alfred Bingley.
	" Sir Godfrey Fell.
	" Mr. F. C. Rose.
	" Mr. C. H. Kesteven.
	" Mr. D. deS. Bray.
	" Lt.-Col. R. E. Holland.
	" Surg.-Genl. W. R. Edwards.
	" Mr. G. R. Clarke.
	" Mr. H. Moncrieff Smith.
	" Mr. C. A. Barron.
	" Mr. P. L. Moore.
	" Mr. T. Emerson.
	" Mr. E. H. C. Walsh.
	" Mr. C. A. Kincaid.
	" Sir John Donald.
	" Mr. P. J. Fagan.
	" Mr. J. T. Marten.
	" Mr. W. J. Reid.
	" Mr. W. F. Rice.

The amendment was therefore negatived.

The Hon'ble Sir William Vincent :—"My Lord, I will not attempt to deal with all the questions that have been raised during the debate to-day. The Council is weary and the points have already been very fully discussed. But there are one or two matters to which I should like to draw attention. In the first place, it has been suggested, I think, by the Hon'ble Mr. Sarma—I hope I do him no injustice—that the Government are wrong in acting against the wishes of the non-official Members, that they are wrong in refusing to yield to educated opinion as represented in this Council. Am I correct in this statement?" 6-4 P.M.

The Hon'ble Rao Bahadur B. N. Sarma :—"I said that judgments differ and that the judgment of the non-official Members is correct and the judgment of the Government is wrong."

The Hon'ble Sir William Vincent :—"That is very nearly the same thing. This argument has been put higher on a previous occasion when it was suggested that Government were callously regardless of the Members of this Council and that they took a pride in flouting public opinion. My Lord, there is no foundation for that statement. The Members of your Excellency's Government are just as much human beings as any one else. They no more enjoy being made the targets for abuse by a virulent section of the press than anybody else. They no more delight in acrimonious discussions with various Members or in differing from those whom they are accustomed to look on as their friends than other people do. And I ask the Council to believe, therefore, that, if we act as we do, we do so from a conviction that the law that we propose is really necessary. I might retort of course that, if there is a danger in opposition to educated opinion there is an equal danger in allowing ill-informed criticism to influence one's opinion too much; that there is a great danger in allowing one's attitude towards a particular measure to be decided or to be swayed by the fear of unpopularity.

"My Lord, while I mention this point I do not wish to press the argument too far because I know that many Members of this Council do oppose this Bill from entirely different motives, as I tried to explain at the beginning of this debate.

"There was then a suggestion, I think, from the Hon'ble Mr. Sastri. I tried to take it down as it appeared to me to be a matter of some importance, and I should be very glad if he will correct me if I have made a mistake. The suggestion was that this Bill was not passed for the ostensible purpose for which it was proposed, but that it was a weapon for use against disorderly soldiers or a weapon for use against Mussulmans who might be distressed at the fate of Turkey, or that it was a weapon to crush any political discontent which might arise out of the present scheme of Reforms, which is not satisfactory. Finally, it was suggested that it might be a measure to enable the Government to crush political agitation when the new Reforms came into being. My Lord, there is no foundation whatever for any of these suggestions. We have no subtle plot, certainly not against soldiers—who have been fighting for us so well—certainly not against Muhammadans, many of whom, the great, great majority of whom, have helped us so much, and certainly not against the Reforms which we are now seeking to promote. The reasons for this Bill are set down quite honestly in the Statement of Objects and Reasons. The Bill is based purely on the Rowlatt Report, and, unless the Council supposes for one moment that the authors of that Report were actuated by motives of the character which have been suggested, then there is no basis whatever for believing that the Government is so either.

"In the course of the debate I have been criticised somewhat severely for referring to what I called the lack of a sense of civic responsibility. I think it was said that I thought fit to sermonise the Council. If I did so, I can only say it was not my intention. My desire was, both now and on previous occasions, in this Council and out of this Council, in legislation and in administration, to secure non-official co-operation and some Hon'ble Members of this Council, I believe, will bear me out in saying that this has been my object throughout these discussions. I still maintain that, if the Government can secure the co-operation of educated opinion in dealing with this crime, it will be a great asset. Much has been done, but much remains to be done, and it is really owing to a want of public spirit, a want of moral courage

particularly in some parts of Bengal, that many of these criminals escape undetected and unconvicted though they are known to be guilty.

"The Hon'ble Pandit Madan Mohan Malaviya went on to suggest that this Bill was a slur on India's loyalty. My Lord, I have explained repeatedly that this is not so, and I will not waste time by doing so again. My Lord, there are many here in this Council who have every right to speak of what India has done during the war, who have done much themselves, and whose provinces have responded nobly to the call of the Empire. There are times however when I cannot but think that those who are most clamant are not those who have done most. I remember the Hon'ble Pandit's attitude on the Defence of India Bill to my remarks to which he takes such exception. I was Secretary of the Council at the time and knew pretty well what was going on. I maintain that he opposed the Bill as far as ever he could and then, when he found that he could not secure support from the other Members of the Council, he nominally supported the principle of the Bill and introduced a very large number of amendments.

"Then, my Lord, what was the Hon'ble Member's attitude in regard to the 100 millions loan. As far as I remember—I was not in the Council at the time, but I have read the papers—he put in a Resolution against it which he subsequently, after speaking some time, withdrew. And why did he withdraw it? Because he could secure no support from Hon'ble Members of this Council.

"My Lord, what was the Hon'ble Member's attitude again on the 45 millions loan last September? Was that in accordance with the attitude of other Hon'ble Members? Was he not almost alone in opposing that loan? In these circumstances is it not somewhat idle, my Lord, for him to speak so much of what India has done?

The Hon'ble Mr. V. J. Patel :—"I rise to correct my Hon'ble friend. Five members of this Council voted against that loan."

The Hon'ble Sir William Vincent :—"I am sorry if I did the Hon'ble Member an injustice in this matter. I had hoped he had voted on the other side. But, my Lord, this does not alter the facts as to Mr. Malaviya's attitude. If, however, my Lord, this Bill was in any way a slur on India's loyalty, if it was intended in any way to affect those who have helped us in the war, then I should have been the last person, as I have always said, to introduce it into this Council. It is not: It is aimed at revolutionaries.

"My Lord, I wish now to turn to a remark of Dr. Sapru's. He has spoken with great vigour against this Bill and with special force on particular provisions of it. I took the trouble to see what the Hon'ble Member had said during the last Session on the debate on the Hon'ble Mr. Khaparde's Resolution on the subject of the report. I see from the Hon'ble Member's speech here the other day the Bill is everything that is evil; there is nothing too bad to be said about it; 'it is wholly wrong in principle, unsound in its inception, unfair in its operation, too sweeping,' and so forth. I thought the Hon'ble Member must have taken the same attitude then. But when I read the speech of the Hon'ble Member I found that all he then said was:—'As regards the recommendations, my Lord, I myself have considerable doubt as to the propriety or efficacy of some of these recommendations.' I maintain that there has been rather a change in the attitude of the Hon'ble Member from that day to this in regard to this Bill. He was then doubtful of some recommendations and he now condemns the whole Bill in unmeasured terms. Indeed, I may go a little further and say that both the Hon'ble Mr. Khaparde and I have some cause for complaint in this matter. The Hon'ble Mr. Kharpade proposed in September that all action on the Rowlatt Committee's Report should be held in abeyance. No Member of this Council supported him. They all said 'Oh! no; we never heard of such a thing. Why should we support such a resolution?' Well, my Lord, the Government thought—it was a foolish mistake of theirs, they were quite mistaken in their appreciation of the attitude of the Council—they thought there were two courses open, either to take action on the Report or to hold the recommendations in abeyance; and, as the recommendations were not to be held in abeyance, according to this Council, we thought, as I say very foolishly, very stupidly, that the Council would, to some extent, support us in putting the recommendations into force.

"We were quite prepared of course for criticism on details and for very important modifications, but we did not think that we were going to run into a solid block of opposition of this kind. At the same time, I quite see that there are many reasons

The Hon'ble Rao Bahadur B. N. Sarma:—"May I state, my Lord, that the Hon'ble Mr. Khaparde's Resolution was so worded as to make it impossible for us to vote on it. He asked 'that the consideration and disposal of the Report be kept in abeyance pending the institution of an inquiry into the Central Intelligence Department.' I am sorry that the Hon'ble Sir William Vincent has been so gravely misled."

The Hon'ble Sir William Vincent:—"I was only explaining that we had made a mistake. I was not in any way reproaching Hon'ble Members, but only regretting our mistake and explaining what we hoped would be the attitude of Council when we brought this Bill forward.

"I wish now, my Lord, to turn to a much more serious question, and that is, this question of passive resistance; and I should like, while I am speaking of it, to thank Hon'ble Members—those Hon'ble Members who have issued a manifesto against it—very much for their action in doing so, because I do believe that this passive resistance has in it great potentialities for evil. And it is the more to the credit of those Hon'ble Members who have issued this manifesto that they have done so in spite of the fact that they do not approve of the provisions of the Bill which is now before Council. It is a matter of great regret to us that a man of the selfless character of Mr. Gandhi should have embarked upon this movement. We can only earnestly hope that it will not materialise, because it is to be feared that though Mr. Gandhi may exercise the greatest self-restraint over his actions, other younger and more hot-headed men who join the movement may be led into violence which can but result in disaster. But, my Lord, whatever be the character of that movement, it is obvious that the Government cannot in any way yield to it. Indeed, any such conduct would be tantamount to a complete abrogation of the authority of the Governor General in Council.

"My Lord, I have now very nearly done. I have only a word or two to add. The conscience of the Government in the matter of this legislation is quite clear. We are acting from a deep-rooted conviction that we are doing what is right. We have proposed the law to meet what we know to be a terrible danger. We have provided numerous safeguards in it so as, as far as is possible, to prevent any injustice occurring under it. We think that many Members of this Council know in their heart of hearts what this danger is, and how formidable it is to peaceable residents in parts of the Province. My only regret is that I have failed to convince more Hon'ble Members of the necessity for this law, and this is a matter of greater regret because I feel it may be partly owing to some fault or deficiency in my presentment of the case."

The Hon'ble Pandit Madan Mohan Malaviya:—"May I say a word, my Lord, regarding what the Hon'ble the Home Member has said about me?" 6-20 P.M.

His Excellency the President:—"A personal explanation?"

The Hon'ble Pandit Madan Mohan Malaviya:—"He was entitled to answer my arguments. He was not entitled to misrepresent me."

The Hon'ble Mr. V. J. Patel:—"Your Excellency, before the motion is put, I object to the passing of this Bill at this meeting."

His Excellency the President:—"On what grounds?"

The Hon'ble Mr. V. J. Patel:—Under section 33 of the Rules of Business:

'If any amendment be made, any Member may object to the passing of the Bill at the same meeting; and such objection shall prevail unless the President, in exercise of his power to suspend any of these rules, allows the Bill to pass'

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The Hon'ble Sir William Vincent :—"May I suggest .

His Excellency the President :—"I do not think the Hon'ble Member need take up the point. I carefully considered this question before I came to the Council to-day.

"Those amendments which were brought up to-day were amendments which were designed to carry out the wishes of the Council itself. They were consequential amendments to the amendments which the Council passed at the last meeting. They were amendments which were all in the direction of the arguments which had been advanced by Hon'ble Members here; and therefore I do not think any surprise has been sprung on the Council by the fact that those amendments were allowed to be brought forward. I may say at once that I hope the Hon'ble Member does not think that I should have allowed the whole of this debate to take place, taking up an entire day, and then accept his suggestion that the day should be wasted and that we should proceed to have another discussion on this matter.

"No no, Mr. Patel."

The Hon'ble Mr. V. J. Patel :—"Do I understand that your Excellency suspends the Rules of Business"

His Excellency the President :—"I do."

The motion that the Bill be passed was put, and the Council divided as follows :—

Ayes—35.	*Noes—20.*
His Excellency the Commander-in-Chief.	The Hon'ble Sir Gangadhar Chitnavis.
The Hon'ble Sir Claude Hill.	Mr. S. N. Banerjea.
" Sir Sankaran Nair.	Raja of Mahmudabad.
" Sir George Lowndes.	Dr. T. B. Sapru.
" Sir Thomas Holland.	Pandit Madan Mohan Malaviya.
" Sir William Vincent.	Mr. S. Sastri.
" Sir James Meston.	Mr. B. N. Sarma.
" Sir Arthur Anderson.	Mir Asad Ali, Khan Bahadur.
" Mr. W. A. Ironside.	Mr. V. J. Patel.
" Sir Veney Lovett.	Sir Fazulbhoy Currimbhoy.
" Mr. H. F. Howard.	Rai Sita Nath Ray Bahadur.
" Sir James DuBoulay.	Maharaja Sir M. C. Nandi.
" Mr. A. H. Ley.	Raja Sir Rampal Singh.
" Mr. W. M. Hailey.	Rai Krishna Sahay Bahadur.
" Mr. H. Sharp.	Raja of Kanika.
" Mr. R. A. Mant.	Khan Bahadur Mian Muhammad Shafi.
" Maj.-Genl. Sir Alfred Bingley.	Rai B. D. Shukul Bahadur.
" Sir Godfrey Fell.	Mr. K. K. Chanda.
" Mr. F. C. Rose.	Maung Bah Too.
" Mr. C. H. Kesteven.	Sir Dinshaw Wacha.
" Mr. D. deS. Bray.	
" Lt.-Col. R. E. Holland.	
" Surg.-Genl. W. B. Edwards.	
" Mr. G. R. Clarke.	
" Mr. H. Monerieff Smith.	
" Mr. C. A. Barron.	
" Mr. P. L. Moore.	
" Mr. T. Emerson.	
" Mr. E. H. C. Walsh.	
" Mr. C. A. Kincaid.	
" Sir John Donald.	
" Mr. P. J. Fagan.	
" Mr. J. T. Marten.	
" Mr. W. J. Reid.	
" Mr. W. F. Rice.	

The motion was therefore agreed to.

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Dated Delhi, the 19th March, 1919.

Pro No. 75

From—The Hon'ble Mr. V. J. Patel, Additional Member,

To—The Hon'ble Mr. H. M. Smith, I.C.S., Secretary, Legislative Department, Government of India.

With reference to the Rowlatt Bill passed into law by the Indian Legislative Council, I have the honour to invite the attention of His Excellency the Governor General to section 68 of the Government of India Act, 1915, which provides :—

"68. (1) When an Act has been passed at a meeting of the Indian Legislative Council, the Governor General, whether he was or was not present in Council at the passing thereof, may declare that he assents to the Act or that he withholds assent from the Act, or that he reserves the Act for the signification of His Majesty's pleasure thereon.

(2) An Act of the Governor General in Legislative Council has no validity until the Governor General has declared his assent thereto 'or' in the case reserved for the signification of His Majesty's pleasure, until His Majesty has signified his assent to the Governor General through the Secretary of State in Council and that assent has been notified by the Governor General."

You are aware, Sir, that the measure is extremely unpopular and has been passed into law in spite of the unanimous Indian opinion both in and outside the Council to the contrary. I, therefore, pray that His Excellency the Governor General may be pleased to withhold his assent from the Act or reserve the Act for the signification of His Majesty's pleasure thereon, I have to request you under the circumstances to submit this letter for the favourable consideration of His Excellency the Governor General and intimate his decision to me as soon as possible.

No. 880, dated Delhi, the 21st March, 1919.

Pro. No. 76

From—The Hon'ble Mr. H. M. Smith, I.C.S., Secretary to the Government of India, Legislative Department,

To—The Hon'ble Mr. V J. Patel, Additional Member.

With reference to your letter dated the 19th March, 1919, praying that the Governor General may be pleased to withhold his assent to the Anarchical and Revolutionary Criminal Law, or to reserve the Act for the signification of His Majesty's pleasure thereon, I am directed to inform you that your letter was laid before the Governor General who regrets that he is unable to accede to your prayer.

No. 881.

Copy with copy of letter under reply forwarded to Home Department for information.

No. 26, dated Delhi, the 26th March, 1918.

Pro. No. 77

From—His Excellency the Right Hon'ble Baron Chelmsford, P.C., G.M.S.I., G.C.M.G., G.M.I.E., G.B.E., Viceroy and Governor General, India,

To—The Right Hon'ble Edwin Montagu, His Majesty's Secretary of State for India.

In conformity with the provisions of section 69 (1) of the Government of India Act, 1915, I have the honour to forward herewith an authentic copy of the Law noted in the margin, which was passed by the Indian Legislative Council, on the 18th March, 1919, and to which I have signified my assent.

The Anarchical and Revolutionary Crimes Law, 1919 (Act XI of 1919).

2. In accordance with the instructions contained in your predecessor's despatch No. 61, dated 21st December, 1869, a copy of the papers relating to the Law mentioned in the accompanying list is enclosed.

List of enclosures of Governor General's letter to His Majesty's Secretary of State for India, No. 26, dated the 26th March, 1919.

1. Authentic copy of the Anarchical and Revolutionary Crimes law.
2. Bill as introduced with Statement of Objects and Reasons.
3. Report of Select Committee with the Bill as amended.
4-10. Extracts from Proceedings of Council dated 6th and 7th February and 1st, 12th, 13th, 14th, and 18th March, 1919.

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